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MONOPOLIES, TRUSTS AND KARTELLS

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PREFACE

THIS little book—or rather the first part of it; for the second part is entirely new—has grown up out of an unpublished essay which (in the absence, I fear, of strong competition) gained a prize at Oxford in 1899. The essay was an attempt to answer the question: "To what extent has the principle of monopoly encroached upon that of competition in the civilised states of the world in recent years, and with what consequences to the wealth and welfare of nations?" In the interval the world has been convulsed by the sudden appearance and rapid collapse of many gigantic Trusts and corners. Several important books have also been published upon this subject by well-informed and competent writers, among whom I should especially mention Messrs. Raffalovich, Von Halle, Ely, Grunzell, Jenks, Macrosty, and Moody. If my own point of view is independent and my treatment of the subject very different from that followed by some of these writers, my obligations to them are none the less real and my respect for their work is none the less sincere. I am glad to find that the official

reports on Trusts, Kartells, and other combinations lately issued in England, Germany, and the United States tend to confirm the old view that competition is the life-blood of trade and commerce. If this be so it will be no easier in the future than it has been in the past to establish and maintain a monopoly without the aid of the legislature or of some extraordinary natural advantages. It may possibly be objected that for a book on business this pays too much attention to the legal conditions of monopolies in England and America. My answer is, that ignorance of the law has led investors, politicians, local authorities, and financiers into lamentable mistakes. It seemed to me essential to any adequate understanding alike of the modern Trust or private combination and of the monopolist state or municipality that some of the information secreted in law reports and legal text-books should be purveyed in an intelligible form and in its economic context to the man in the street.

Part of the last chapter on English Trusts has been supplied by Mr. C. J. F. Atkinson, of Leeds. My sister Margaret has given me much help in revising the proofs; and I am also indebted for some valuable contributions and criticisms on particular matters to Lord Farrer, Mr. J. A. Simon, and Mr. J. E. Allen.

F. W. H.

MONOPOLIES, TRUSTS AND KARTELLS

INTRODUCTION

"THERE are few more pressing studies than those of the relative gains and losses which will accrue to monopolists and the public severally from different courses of action."[1] With this—the dictum of an influential economist — everyone will agree who takes his part in modern commerce, or strives, in however small a sphere, to fulfil those duties of citizenship which consist in the intelligent formation of opinion upon the industrial, commercial, and financial problems of our age and country. But our leading Professor hastens to damp the enthusiasm of lay students by adding that "the problem cannot be solved for practical purposes without fuller and more exact statistics than we at present possess." Is there not some excuse for the impatience felt by

[1] Marshall, *Economics of Industry*, p. 257 (not in last edition). Cp. p. 553 of *Principles of Economics* (latest edition), where we are asked to wait for "practical bearings" "till we approach the end of the treatise."

average humanity at the dismal science? We ask a practical question, and we receive in return diagrammatic curves and mathematical formulæ, with wise cautions about the advisability of suspending judgment until somebody—or a whole society of nobodies—has collected exhaustive statistics. If Adam Smith were now alive to write about the problems of monopoly, and were to deduce from equally insufficient data, by equally distinct principles, conclusions as dogmatic and precepts as imperative as are found in the *Wealth of Nations*, he would be branded as a politician and dismissed as a quack. That the subject of this little book embraces, or at least touches, the very problem which Professor Marshall has warned economists to avoid is undeniable; and if in the face of such a warning the writer trespasses upon a plot where the buildings are incomplete or unconstructed, his excuse is that the buildings will never be finished. Practical difficulties and dangers must be discussed and described in a practical way. By so doing economists can aid those who control municipal and national policy. Political Economy is Queen of the Arts. Her precepts are more important than her scientific conclusions. Her subjects can employ themselves better than in attaching epitaphs to exploded theories, or in labouring appropriate explanations of solved problems, or even in exhausting their ingenuity to discover

trifling exceptions to sound maxims of finance. At the same time we may fairly plead that since Professor Marshall published his first volume a vast amount of material has been printed on the subject of monopolies, both in Europe and in the United States.

In practical regions infested by human life science is always subjected to grave inconveniences, and even in that great department of politics which we call Political Economy (however carefully circumscribed) the stable motive of self-interest, though dominant, cannot quite eliminate less calculable elements. We must be content to say that in the sphere of wealth—on the "business" side of his life—man tends to seek his own interests. Besides the direct efforts of some as producers and distributors, there are the indirect interests of all as consumers; and there is a large and possibly a widening sphere of wealth production and distribution in which the buyer or consumer cannot hope to have his indirect interests safeguarded by competition. This sphere—if the costs of government pure and simple be excluded[1]—is fairly covered by the term monopoly or exclusive dealing. Mono-

[1] It is not usual to regard the military and police services as in the nature of monopolies (the first imperial, the second half imperial half local). Both are onerous services; but the production of national and personal safety is an important adjunct to the production of wealth, though the tendency to over-insure in these directions is a most serious source of national impoverishment.

poly is a Greek compound, signifying literally "sale by one man." Aristotle gave the term its broader meaning—a meaning which Dr. Johnson missed in his *Dictionary* when he defined it merely as "the exclusive privilege of selling a thing." Johnson's definition is based upon the earlier history of the word in English law. A term so convenient as an antithesis to competition was not likely to remain restricted, and it has been extended to cover buying as well as selling. Nor, of course, is it necessary that a monopoly should be a privilege or legal concession. Professor Edgeworth has defined monopoly with precision as "sale or purchase by either one man or a group acting as one man." He adds that this definition should properly be limited by the condition that a monopolist deals not with another monopolist, but with parties who compete against one another. Commodities are only at a monopoly price, says Ricardo, when the competition is wholly on one side. Where a monopolist sells to competing buyers the price is theoretically the highest that the most eager buyers will offer, for there is no competing seller to offer to accept a lower price for the commodity. But where one monopolist sells to another the case becomes complicated. Thus the Westphalian Coal Kartell is reported to have sold its coal at lower prices to the State railway monopoly and to iron and steel Kartells than to the general public. A monopolist, though

he may be for the moment in absolutely unrestrained control of the market, seldom exacts the uttermost farthing. There is (1) the fear of public indignation which might lead to his incurring the displeasure of some public authority, or (2) the danger of bringing competitors into existence, or (3) the probability that consumption will be seriously checked—a large output at a low rate of profit being better than a small output at a high rate of profit. Such considerations have a strong bearing upon the action of Trusts and Kartells, railway companies, and other permanent concerns of a monopolistic character. But where you have a temporary operation like a corner, the full monopoly price is likely to be exacted. It must be remembered that there are degrees of monopoly, and that almost every monopoly has its limits and conditions. Where there is competition to buy or rent land in a particular district a landlord in that district has a partial monopoly, and the more land he owns the higher are the monopoly prices that he can get by sale, or extract in the shape of rents. The same may be said of a brewery which finds an outlet for its beer in tied houses. The greater the proportion of the "tied" sale to the free sale the more monopolistic are the conditions under which the manufacture of beer is carried on. The case of a manufacturing mother country with colonies attached to it by a prohibitive or preferential system is a political

parallel to the brewery with tied houses. Adam Smith constantly speaks of "the colonial monopoly." In his day it was a maxim of European policy and even of international law that a colony or a dependency should only be allowed to trade with its European owner. A successful revolution destroyed the prohibitive system, and the preferential system with its milder forms of monopoly was substituted. Some observations upon this subject by the great Montesquieu, which have somehow escaped the notice of writers on monopoly, may serve to illustrate the objections to what may be called the monopoly principle in international trade.

"It is a true maxim, that one nation should never exclude another from trading with it, except for very great reasons. The Japanese trade only with two nations, the Chinese and the Dutch. The Chinese gain a thousand *per cent.* upon sugars, and sometimes as much by the goods they take in exchange. The Dutch make nearly the same profits. Every nation that acts upon Japanese principles must necessarily be deceived; for it is competition which sets a just value on merchandise, and establishes the relation between them.

"Much less ought a state to lay itself under an obligation of selling its manufactures only to a single nation, under a pretence of their taking all at a certain price. The Poles, in this manner, dispose of their corn to the city of Dantzick; and several Indian

princes have made a like contract for their spices with the Dutch.

"These agreements are proper only for a poor nation, whose inhabitants are satisfied to forego the hopes of enriching themselves, provided they can be secure of a certain subsistence; or for nations, whose slavery consists either in renouncing the use of those things which nature has given them, or in being obliged to submit to a disadvantageous commerce."[1]

In the following pages an attempt will be made to describe and to estimate the recent course of the forces and principles which make for monopoly in different parts of the world. Many classifications of monopolies have been attempted; most of them are too intricate and elaborate to be serviceable; and as the purpose of classification is to simplify thought and to assist, not to perplex, the mind, we shall be content to mention at the outset two important distinctions that are apt to escape notice, though they vitally affect the problem. Monopolies may be

(1) Either natural or artificial, and

(2) Either local or imperial (national or international).

These two cardinal distinctions give us four classes of monopoly.

(1) A natural local (or national) monopoly, like water.

[1] *Spirit of the Laws*, bk. xx. chap. 8; Nugent's translation.

(2) A natural imperial (or international) monopoly, like oil or sulphur.

(3) An artificial local (or national) monopoly, like a tramway, a railway, or a patented manufacture.

(4) An artificial imperial (or international) monopoly, like the international post, or a copyright book.

The nature and importance of these distinctions when once pointed out are plain enough, and will be illustrated constantly in the course of our investigations. If what may be called the recognition of monopolies and their treatment by the State or municipality can be shown to depend upon these distinctions, something will have been done to disperse a confusion of thought that at present too often embarrasses the legislature and the Bench. But it must be remembered that, useful and important as these distinctions are, they are only distinctions of degree. A wise public authority will only make a restrictive grant in cases where a monopoly tends to grow up from the circumstances of the case—except, indeed, where grants are made of a patent or copyright for a limited period of years to encourage, reward, and protect invention. From one point of view a tramway is an artificial monopoly. It is an exclusive service, and the fares are not fixed by the competition of another tramway; though railways, buses, cabs, and legs are, or may be, according to times and circumstances, more or less effective com-

petitors. But from another point of view a tramway is a natural monopoly. Two tramways cannot run down one street; if they could conveniently do so, and were unable to bargain or amalgamate, there would be an economic justification for setting up two tramway companies or authorities in the same area to compete against one another. Similarly gas and water are natural local monopolies, because the advantages of allowing competition in the distribution of light and water in the same area are more than counterbalanced by the economic waste which such competition involves. Hence in almost all civilised countries these and similar services are converted into artificial local monopolies, being granted or leased to companies under certain conditions and restrictions as regards prices to be charged to consumers, etc., or else being owned and managed directly by public bodies responsible to the ratepayers.

The distinction between local and world monopolies is equally difficult to draw. The same Welsh reservoirs, if sufficiently large, might supply Wales and London. Niagara may very well provide Canadian as well as American cities with electric power. A coal mine may have a local monopoly; it may be able to sell home coal in its immediate neighbourhood at prices with which more distant mines cannot compete, or, like some of the coal mines in South Wales, it may have an international monopoly as the

sole producer of a particular steam coal which gives the best results in speed. Again, it would be puzzling to know under what classification to place the Standard Oil Company and the great Steel Trust. In so far as they hold the sources of supply in the United States they are natural local or national monopolies. In so far as the prices at which they sell to American consumers are monopoly prices, artificially raised by means of an artificial tariff and artificial combinations, they are artificial monopolies. In so far as the Standard Oil Company controls the oil supply and oil prices of the world, it is more than a local, it is an international monopoly. Sicilian sulphur and Formosan camphor, being government monopolies, are artificial as well as natural ; and so far as their products are sold at prices not regulated by competition all over the world they are international as well as local monopolies.

These instances will suffice to show the advantages and disadvantages of theoretical classification, and will emphasise the importance of paying attention to the actual monopolies which, under so many different names, are now arising, flourishing, and decaying before our eyes. If we do not share in the alarming conclusions at which writers upon this subject—especially in the Yellow Press—usually arrive, it will be because it can be shown that the facts seldom overtake their anticipations, and because the argu-

ments by which they proceed from the present to the future are unsound and fallacious. Disappointing dividends and other ascertained facts may be despised as inconclusive or superficial, but they are far more trustworthy than the "tendencies" which pseudo-philosophy, intent on manufacturing panics, professes to detect below the surface of things.

I wish I could have found space within the narrow bounds of this volume for an adequate discussion of the land question; for land, being limited in quantity, is of the nature of a monopoly, and in countries where the land laws are still encumbered by feudal restraints the reform of land tenure seems to be not only a logical development of the Free Trade argument, but an essential condition of progress in commerce and agriculture. The appreciation of land values in and around growing towns is another serious mischief; for the ground landlords levy in rent an exorbitant contribution from the profitable labours of the community. The various plans which have been proffered or adopted for taxing this unearned increment are all relevant to our subject and of high practical importance. The same is true of the practice, now very prevalent in England and Scotland, of ejecting farmers and labourers from large estates in order to create a wilderness in which game may be artificially reared during nine months of the year to be shot by sportsmen in the remaining

quarter. The strange thing is that the evil, both in town and country, should be allowed to grow unchecked, when a simple and effective financial remedy is at hand. A provision that unoccupied or waste land, in town and country alike, should be rated on its real value, would be not only an act of elementary justice to other ratepayers, but would also prove an effective discouragement to a practice which has grown out of monopoly and could hardly flourish under a reasonable system.

Part I

MONOPOLIES IN GENERAL

CHAPTER I

HISTORY OF MONOPOLIES

IT is impossible to find a time in the history of society when rulers and their subjects have not sought—too often by unjust or violent means—for the gains that arise from monopoly.

Pharaoh's corner in corn may have been the successful model that inspired Leiter's failure. The exploit of Thales is well known to readers of Aristotle. But seeing that Aristotle's writings are not very popular nowadays, and that the plan of Thales is, as he says, a financial device of universal application, we may recall the story here. Stung, it is said, by the reproach of poverty, Thales determined to turn his philosophy to account. By an astronomical forecast he ascertained that an abundant crop of olives might be expected in the coming season. Accordingly before winter was over he collected a little cash and engaged all the oil-presses in Chios and Miletus, paying instalments in advance.

There was no demand for the presses at that time, and so he got them very cheap. When the olive

season came the crop was abundant and presses were immediately in great demand. But Thales had them all, and by letting them out on his own terms amassed a great fortune, so proving that philosophers can easily make money if they like, and illustrating the truth of Aristotle's proposition that "the endeavour to secure oneself a monopoly is a general principle of the art of money-making."[1]

But we shall not linger over the examples and illustrations that might be drawn from classical and sacred writers, for our own history provides us with a plentiful supply. From early times it had been one of the royal prerogatives to grant privileges and monopolies to favourites or persons whom it was expedient to reward at the public expense. Lawyers in search of precedents found several such grants in the reigns of the Yorkist and Lancastrian sovereigns. But it was under the last of the Tudors that the abuse of the royal power to create monopolies made them the subject of parliamentary debate and of judicial interpretation. There is a well-known and impressive description in Hume's *History of England* of the formidable grievance which arose in the reign of Elizabeth. That parsimonious Queen, in order to reward her servants without recourse to her own purse, granted patents or monopolies on a scale previously unknown.

[1] See Aristotle's *Politics*, I. iv. 31.

The grantees usually sold their privileges to merchants and manufacturers "who were thereby enabled to raise commodities to what price they pleased, and who put invincible restraint upon all commerce, industry, and emulation in the arts." Americans who complain of the oppressiveness of the Trusts will be astonished at the number of commodities that had been monopolised in the reign of Elizabeth. Currants, salt, iron, powder, cloth, cards, saltpetre, lead, oil, vinegar, glass, paper, starch, tin, are but a few in the list of articles that had been appropriated to monopolists. Monopolies of transport had been added to monopolies of sale and production. We read that patents had been issued granting to individuals the exclusive right of transporting iron ordnance, beer, horn, and leather, and of importing into England Spanish wool and Irish yarn.

When this list was read in the House a member called out, "Is not bread in the number?" "Bread!" cried everyone in astonishment. "Yes, I assure you," replied he, "if affairs go on at this rate we shall have bread reduced to a monopoly before the next Parliament."

In some places the price of salt was raised from sixteen pence to fourteen or fifteen shillings a bushel; and almost every species of foreign commerce is said to have been confined to individuals or exclusive companies before the House of Commons had the courage to introduce a Bill for the abolition of

monopolies. The courtiers maintained that this was a matter of royal prerogative, and it was gravely asserted by servile members of the House that the royal prerogative of regulating in this way the whole trade of the country ought not to be disputed or even examined. After a discourse more worthy, as Hume says, of a Turkish divan than of an English House of Commons, "the Queen, who perceived how odious the monopolies had become and what heats were likely to arise, sent for the Speaker, desired him to acquaint the House that she would immediately cancel the most grievous and oppressive of the patents."[1]

In the same year the famous "Case of Monopolies" (*Darcy* v. *Allen*)[2] came before Chief Justice Popham. One Darcy had received a grant from the Queen for the sole making of cards in her realm. The court decided that the grant was utterly void as being a monopoly and against the common law. There were, it declared, three inseparable incidents of every monopoly against the commonwealth. (1) The price of the thing monopolised was raised; (2) its quality deteriorated; and (3) the grant tended to the impoverishment of artificers. Early in the reign of James I. certain patents were granted for "smalt" and glass. These were resolved to be grievances by a committee of the House of Commons, and at last the law was authoritatively declared in the Statute of

[1] Hume's *History of England*, xliv.
[2] Coke's *Reports*, 84.

Monopolies (1624), which is still in force. By that Act all monopolies, with certain exceptions, are declared contrary to law, void, and of none effect. The exceptions are the foundation of the modern English law of patents. In the words of a modern text-book on the law of patents, "the same essentials must be proved by an applicant for the grant of letters patent to-day as were necessary at the date of the Statute of Monopolies; he must be the first to introduce into this realm the manufacture for which he seeks a patent, whether by enterprise in importing it from abroad, or by the exercise of his own inventive faculty." The Statute of Monopolies did not abolish it: it only restricted the prerogative first in subject matter, secondly in time. A patent is still granted as a "present" "of our special grace, certain knowledge, and mere motion." But it is only granted to reward and encourage invention, and it is only granted for a term of fourteen years. When that term has expired the monopoly value of the patent comes to an end. The copyright of an author is of the same nature. A trade-mark is also an exclusive right, but it differs from a patent in that its object is not to reward a deserving person or to benefit mankind, but mainly to indicate the source of an article. "Made in Germany" was intended to protect English manufacturers from the inferior products of foreign rivals, but its result has been to advertise German goods.

Though the Statute of Monopolies made the law clear, Charles I., in his endeavour to govern without Parliament, and therefore without parliamentary supplies, was driven to revive the old dispensation, and proceeded to sell a multitude of monopoly grants in order to replenish his empty purse.

"These," said Sir John Culpepper, "like the frogs of Egypt, have gotten possession of our dwellings, and we have scarcely a room free from them. They sip in our cup; they dip in our dish; they sit by our fire; we find them in the dye-vat, washing-bowl, and powdering-tub. They share with the butler in his box; they have marked and sealed us from head to foot; they will not bate us a pin."

The soap monopoly granted in 1631 was especially odious, as the compound made by the King's patentee was very bad as well as very dear. With the accession of William and Mary the claim of the king's prerogative to dispense with the law was finally abandoned.

Thus Parliament and the courts succeeded before the end of the seventeenth century in destroying the monopolies which the Crown in the sixteenth century had been in the habit of granting to individuals, leaving only the law of patents which confers rewards upon invention. But a vast number of local monopolies, dependent upon guilds or corporate laws and customs, remained to harass commerce and industry

in the eighteenth century. To destroy these was one of the main objects of Adam Smith and other enlightened reformers. Of scientific contributions to the theory of monopoly, one of the first, best, and shortest is contained in the note-book of Adam Smith's *Lectures on Justice and Police.*[1]

"Exclusive privileges," he says, "though some arise from nature, are generally the creatures of the civil law. Such are monopolies and all privileges of corporations which—though they might once have been conducive to the interest of the country—are now prejudicial to it. The riches of a country consist in the plenty and cheapness of provisions, but their effect is to make everything dear. When a number of butchers have the sole privilege of selling meat they may agree to make the price what they please, and we must buy from them whether it be good or bad. Even this privilege is not of advantage to the butchers themselves, because the other trades are also formed into corporations, and if they sell beef dear they must buy bread dear. But the great loss is to the public, to whom all things are rendered less come-at-able and all sorts of work worse done; towns are not well inhabited, and the suburbs are increased. The privilege, however, of vending a new book or a new machine for fourteen years has not so bad a tendency; it is a proper and adequate reward for merit."

[1] Delivered in 1762 or 1763, and edited by Dr. Edwin Cannan. Oxford. Clarendon Press, 1896.

Later on (p. 179) he shows how monopolies destroy public opulence.

"The price of the monopolised goods is raised above what is sufficient for encouraging the labour. When only a certain person or persons have the liberty of importing a commodity, there is less of it imported than would otherwise be; the price of it is therefore higher, and fewer people supported by it. It is the concurrence of different labourers which always brings down the price."

He quotes as an instance the Hudson's Bay and the East India companies, which can make their prices what they please. For examples nearer home, he refers again to meat and bread. "The butchers and bakers raise the price of goods as they please, because none but their own corporation is allowed to sell in the market, and therefore their meat and bread must be taken whether good or not." On this account magistrates were always required to fix the prices of bread and meat, though not of free commodities like broad cloth; but this expedient was not sufficient, "as he must always settle the price at the outside, else the remedy would be worse than the disease, for nobody would apply to these businesses, and a famine would ensue."[1]

[1] See for Assize of Bread, *Wealth of Nations*, Thorold Rogers' edition, vol. i. pp. 64–6, 150–1.

It may be pretty safely conjectured that in nearly all the boroughs of England and Scotland during the eighteenth century consumers suffered far more from the monopoly prices imposed by butchers, bakers, brewers, etc., than did the people of New York from the Beef Trust for a few months in 1904. It has been calculated that at most 5 per cent. only of American products are in any way controlled by monopolistic combinations, though if manufactured articles alone are considered, the percentage is, of course, much higher. But in the eighteenth century almost all our manufactures, handicrafts, and retail trades were so regulated by by-laws and custom that monopoly prices were the rule rather than the exception. And the policy of England, as Adam Smith shows, was only an offshoot of the policy of Europe. It would be easy to prove, if space permitted, that unskilled labourers suffered most from these unnatural conditions. Their increasing misery was significantly marked at the end of the century by the necessity which led the justices of Berkshire and other counties to enter upon the policy of fixing by judicial orders the wages to be paid to agricultural labourers. The Speenhamland "Act" was a logical outcome of the same policy that had produced the Statute of Apprentices and the Assize of Bread.

In civilised countries generally and particularly in Great Britain, where Adam Smith's discoveries were

most fully and liberally applied, the emancipation of commerce through freer trade and improved transit by land and sea let loose the springs of industry and increased the wealth of mankind to an almost fabulous extent. Things previously undiscovered or known only as the luxuries of princes are now the common necessities of the poorest labourers. Our primitive wants have developed and ramified in a thousand directions. Invention has created, and in its turn been stimulated by, wealth. One of the first results of the prosperity engendered by the triumph of Free Trade principles over the old mercantilist and restrictive policy of Europe was the discrediting of combination in all its forms. A distinct intellectual revolt broke out against monopolies of every sort and kind; and the leaders of this revolt refused even to entertain the bare idea of a natural monopoly. Yet with her usual perversity Fate decreed that a growth of natural monopolies should follow with perplexing rapidity on the heels of the new doctrines which denied their existence.

At the beginning of the last century two forms of local undertakings rose into prominence, both of which have since by universal practice been assigned to the local species of natural monopoly. But at that time it was generally thought that gas and water companies could easily be brought under the ordinary economic laws, and many of our legislators, seeing the dangers of monopoly, urged that "a rivalship" should be insti-

tuted between the various companies in the metropolis. These enthusiasts tried with some success to bring the House of Commons to "see the policy of rousing a spirit of competition, not only to prevent the probable inconvenience, but perhaps arbitrary exactions also."[1]

The first Act of the first gas company in 1810 expressly excluded the introduction of a monopoly into the area assigned by the following proviso:—

"That nothing in this Act contained shall have the effect of depriving any person or persons of any right which he or they at present possess, or of interfering with any right which he or they may hereafter acquire of lighting streets or houses with gas or in any other manner";

and as a matter of fact private persons and companies without statutory powers did supply gas after 1810 within the district then assigned to the Gas Light and Coke Company.[2]

But although legislators who rusticated in their *latifundia* were quite prepared to dispute the thesis that towns required any artificial supply of water or

[1] Cp. *Hansard*, May 17th, 1819, debate on the Third Reading of the London Gas Light Bill, speeches by Mr. Colclough and Mr. Moore. Sir J. Yorke said he "had no partiality for the fire and water companies. By their conduct they were a nuisance to the public." But "in his opinion all the competition or rivalry which they produced was the rivalry of who should pull the pavement most violently to pieces."

[2] See Clifford's *History of Private Bill Legislation*, vol. i. p. 218.

light, the dispute could not be kept up for ever, and as the alternatives appeared to be on the one hand monopolistic water and gas companies, or on the other no water and no gas, companies sprang into existence in all parts of the country. Most towns were too small to offer a field for the operations of more than one company of each class. Even in London the idea of "rivalship" was gradually abandoned; and the companies soon arranged to parcel out the metropolis into compact monopolistic areas. It is now held in English courts that companies which have been authorised by Parliament to supply gas and water to the inhabitants of a restricted area acquire by implication a regulated monopoly, and it has hitherto been supposed that so long as it performed the duties imposed upon it, such a company has a right to expect that no other company or local authority will be permitted to enter into competition. The doctrine may startle the economist, as its enforcement oppresses the consumer. But the extreme lengths to which it has been carried in Parliament and the courts can be proved by a reference to statute and case law. The effect of Section 6 of the Metropolis Gas Act of 1860 is to give each company a monopoly in its own district; and the House of Lords has decided that a consumer who has premises overlapping the areas of two metropolitan gas companies must have two meters and be supplied by each company for that part of his premises which is within its

own area, and that he cannot evade the inconvenience of being served by two monopolies by placing his meter within the limits of the invading company![1]

The Electric Lighting Act of 1882 shows that the appearance of another artificial light had given the legislature fresh confidence in the principle of competition. No special clause was inserted in the Act to enable the Board of Trade (which exercises the administrative control) to limit profits or revise prices. The competition with gas, it was argued, would be severe, and, as there was nothing to prevent the Board of Trade from granting at any time another licence or Provisional Order to competing undertakers in the same district, prices would be efficiently kept down by the potential competition of electric light as well as by the actual competition of gas. Most important of all, the interests of consumers were safeguarded by being left in their own hands. The Act gave the Local Authority the power of compulsory purchase of the local company's undertaking at the end of twenty-one years.[2]

So far, then, as Great Britain is concerned, it has been reluctantly admitted by theory, proved by experience, and enacted by law that the supplies of water and artificial light tend to become natural and

[1] See the *Gas Light and Coke Company* v. *South Metropolitan Gas Company*, reported in 62 *Law Times* (n.s.), p. 126.

[2] See Board of Trade Report on Electric Lighting, 1883. By an Act of 1888 a longer period of forty-two years was substituted.

local monopolies; that is to say, local services which cannot be rendered conveniently or economically under conditions of full competitive enterprise. Two sets of gas-pipes or water-pipes separately owned and managed cannot run down one street, and there are few towns in the civilised world in which an inhabitant has a cheap supply of water or artificial light effectively guaranteed by the rivalry of several competing companies.[1] So far it has been possible to treat water and gas together. But on closer inspection two important differences of degree emerge. Both are *natural local monopolies;* but the monopoly of water is of the more *natural*, that of gas of the more *local* character. There are no substitutes for water; but candles and oil supplemented by coal or wood fires are always with us, electric light sometimes; and that these substitutes are efficacious up to

[1] It might be inferred from Mr. James Pollard's monograph on Berlin that that city (one of the best lighted in Europe) is an exception to the rule. In 1827, says Mr. Pollard, "a strong English company, which had already established gas undertakings in other German towns, obtained a twenty-one years' concession for the gas supply of Berlin. The Corporation became so satisfied towards the end of the period that the growth of the city and the large profits of the company warranted them in starting a gas establishment of their own that they declined to continue the monopoly. In 1847 they erected gasworks (*Städtische Gasanstalten*) under their own administration. Not to be beaten, the company, which was allowed to continue its business as an independent concern, instantly reduced its price from 10 marks per 1,000 English cubic feet to 5 marks, and the latter became the price of the town supply as well." (*A Study in Municipal Government*, p. 27.) In 1894, however, the bitterness of competition had degenerated into "friendly rivalry."

a certain point is proved by the fact that the two British gas companies which in 1897 charged the lowest prices to private consumers paid dividends of 10 and 12¼ per cent., while that which charged the highest price paid no dividend at all.[1]

Fortunately, however, for the inhabitants of a hilly and well-watered country like our own there are many places in which the want of substitutes for water is balanced by the competition of one water supply against another; and there would have been far more if the legislature had not improvidently lavished upon corporations, private or public,[2] the exclusive right of supplying large areas with water. Even as it is, there are many districts where a local authority in need of water can apply not only to the water diviner and engineer, but to more than one corporation, which, having adjacent mains and a good surplus over and above its own requirements, is anxious to enter into a bargain to supply water in bulk. Thus the numerous and thickly-populated districts which lie between Manchester and Thirlmere have now,

[1] See the Parliamentary Returns for Authorised Gas Undertakings in the United Kingdom (1898). The companies referred to were at Plymouth, Hull, and Lampeter, and the prices charged per 1,000 cubic feet of gas were 1*s.* 9*d.*, 1*s.* 10*d.*, and 6*s.* 3*d.* respectively.

[2] The advantages to water-consuming ratepayers of a water company which they elect over one which they do not are obvious. But it ceases so soon as the water is supplied by contract to communities outside the boundary. It is no advantage to Mirfield that the body which supplies it with water is elected by the ratepayers of Huddersfield.

apart from statutory restrictions, another possible source of supply.

The results of English experience may now be briefly summarised. The seventeenth century destroyed the practice of granting trade monopolies to individuals and established the law of patents. Charters, however, which have frequently had disastrous political as well as economic consequences, still continued to be granted occasionally to great companies for the purpose of encouraging trade enterprise in distant parts of the world. Chartered companies have always been defended on grounds similar to those by which patent rights were successfully established. Towards the end of the eighteenth century the teaching of the economists conspired with the introduction of steam-power and the factory system to destroy restrictions on internal and external trade; and the great amalgamation of commerce was practically completed in the year 1860.

In the nineteenth century the introduction of railways, tramways, and the necessity of supplying water and light to towns led to the recognition of an important group of natural monopolies of transport and distribution. Experience has shown that under the most favourable circumstances these cannot be adequately controlled in the interests of passengers, consumers, and traders by the laws of competition; and it has accordingly become the established policy that natural monopolies must be administered or

controlled either by the central government or by the local authorities. The post and the telegraphs are the only important services that have yet been nationalised in this country; but there is at least one trade which, as a result of legislation, has developed a new and dangerous form of monopoly. The abuse of alcoholic liquor led to the establishment, in the eighteenth century, of licences for the retailing of beer, wine, and spirits; and after an unlucky experiment in Free Trade in beer, which was made in the early thirties of last century, the Licensing System has been steadily developed. Altogether an enormous revenue is now derived from excise and customs duties and licences. Restrictions in the number of public-houses and the modes of taxation that have been adopted have created and encouraged the tied-house system, which has now extended over about 90 per cent. of our public-houses.

At the same time private brewing, like private baking, is fast disappearing. In the middle of the century it was still so prevalent as to constitute an insurmountable obstacle to the conversion of the malt tax into a tax upon beer; but in the twenty years which followed the malt consumed by private breweries fell from about 2,000,000 bushels to a tenth of that amount; and the greatest of modern financiers successfully accomplished in 1880 the reform which he had recognised as desirable, but impracticable, in 1853.

It is unnecessary to discourse here upon the evils of the system; they are widely known and appreciated. The monopoly towards which the liquor traffic has been progressing so rapidly is of a local rather than a national character. For the combinations of tied houses are intended to force the products of one brewery upon particular districts. The pressure put by the public upon the justices of the peace to grant no new licences (in the interests of sobriety) greatly facilitates the formation of these monopolistic spheres. All that need be insisted upon now is that in return for the grant of a public-house licence the public has a right to expect a rent proportionable to its value. If a municipality leases a ferry, it is expected to make a good bargain for the ratepayers. There can be no moral or legal reason why a public-house licence should not be sold under proper conditions and restrictions for a year or a term of years to a suitable person who is willing to pay the largest sum for the monopoly granted. At present a large gin palace will seldom pay in licence duties more than 5 per cent. of its rateable value, and it frequently pays less. If it paid 80 per cent. it would still be paying less than the rent which a tenant would probably be willing to give for carrying on the trade under a system of high licences.

As the taxation of alcohol is closely connected with the monopoly that has grown up in "the Trade," so the old duties upon knowledge are asso-

ciated with another series of monopolies. The paper duty, in particular, illustrates a leading characteristic of what may be called the psychology of monopolies. Not only do duties tend to create and foster monopolies: it must be added that the tendency to corners and combinations often lingers after the cause appears to have been demolished. The taxes upon knowledge have been repealed; the Press is no longer under the thumb of the Government; a premier no longer inflicts leading articles on the country papers; yet the newspaper proprietor, the compositor, the bookseller, the bookbinder, and the teacher still seem to be instinctively attracted by the advantages of restrictive combination.

"Perhaps," said Mr. Gladstone on a celebrated occasion, "the House will permit me to observe to them the very singular state of things generated by the paper duty. In the book trade and the production of books the effect is the creation of one chain of monopolies."

Mr. Gladstone then went on to explain his proposition in detail. In the first place the publisher could not deal with the paper maker directly; he had to deal with the wholesale stationer. As for the publishers themselves, their monopoly "is so rigid that only a few years ago the general body refused to supply books to any retail bookseller unless he would covenant not to take off more than a certain amount of

discount in selling to the public." But this was not the whole story. Besides the monopolies of the publishers and stationers, there was the printers' monopoly — a most formidable combination, which took as its first and fundamental principle the rule that no woman should be employed in printing.[1]

Thus the result of the paper duty was that, beginning with the restraint of trades, it ended by producing a group and cluster of monopolies at every point in the processes which intervened between the making of the paper and the setting of the book.[2]

It is probable that Mr. Gladstone over-estimated the effect of the duty, and failed to realise that the trade is one which, in many of its branches, inevitably lends itself to monopoly. A newspaper retails opinions and intelligence to a particular class of consumers. It may appeal to a stratum of society with a common pursuit, or a common religious creed, or a common political object; and so, though it may cover a large

[1] "Perhaps some Hon. Gentlemen on hearing that may be inclined to laugh; but I believe on consideration that it will be obvious enough—or at least probable—that women are admirably adapted for that particular trade, because they are endowed with a niceness and smallness of finger which handles types far preferably to that of a man." See Mr. Gladstone's speech on the Paper Duty Repeal Bill, *Hansard,* March 12th, 1860.

[2] When the excise duty on paper was first imposed the delays caused by governmental inspection were of little consequence; but when in the thirties and forties invention decreased the length of the process from a period of weeks to a period of hours the complaints of English manufacturers grew louder and more impatient.

area in which numbers of other newspapers circulate, nevertheless its circulation is in the nature of a monopoly. Or, again, it may be a local paper appealing to all classes within a limited area through the common bond of neighbourhood. Nor is the monopoly confined to the production and circulation of the newspaper or book; it extends also to the machinery by which they are sold. In the speech just referred to Mr. Gladstone founded an argument against the excise duty on the fact that France, despite the disadvantages arising from her protective system, contrived to produce books equal to English in size and quality of material at a price less by one-half or a third; and as evidence he appealed to the contrast between the railway libraries of England and those of France. Here, again, Mr. Gladstone may have exaggerated the effect of the duty by failing to notice the action of another cause. Though the paper duty is gone, the railway bookstall monopoly is still with us; and the 25 per cent. extra which must be paid for a novel at a bookstall is a standing proof of the practical evils of monopoly and of the need for State regulations.

It is possible that the interests of the bookstall monopolist may in reality be identical with those of the consumer;[1] it may be that it would pay him

[1] But only in busy centres. A bookstall (like a refreshment stall) at a small country station can only be made remunerative by charging exorbitant prices. There the public has no just grievance.

to allow the same discount as ordinary booksellers. But the important question is, not what his interest is, but what the monopolist believes it to be; and until monopolists are philosophers and philanthropists they should not be allowed to be kings. The completeness of the monopoly in England may be illustrated by an indenture granted some time ago by the South Western Railway Company to Messrs. Smith and Sons. The railway company granted for seven years the sole and exclusive licence and privilege to vend, sell, lend, exhibit for sale and loan, newspapers, books, periodicals, stationery, etc., and such other like articles required for the convenience of passengers by railway *as should be approved by the Secretary of the Company*, at all their stations. The indenture further provided that the tenants should not exhibit or offer for sale any books or placards of "an indecent, immoral, or seditious character, *or which should be forbidden by the Company*." The railway bookstall, therefore, affords a spectacle peculiarly odious to the laws of England, yet firmly established in our midst—a monopoly aggravated by a censorship. In Germany, where the railway bookstalls are controlled by the government, a severe censorship is exercised, and all socialistic newspapers are rigorously excluded.

But besides all these cases of natural and artificial monopoly which exist in modern England under a system of Free Trade, there are, we are told, a vast

number of combinations growing up in the industrial world. England, it is said, has suddenly begun to suffer from the very same monopolistic growths which the State doctors of the United States, Germany, and other protected countries have been trying to cure. It is admitted that we are not yet so badly off as our neighbours. But the tendency, we are told, is there. Let us welcome it, say some writers. Competition, they declare, is no longer the life-blood of industry. Great trade requires great combinations. It is absurd to kick against the pricks. But does the tendency exist? Have we any combinations that fix prices, and are the attempts made likely to encourage future projectors? An attempt to answer this question will be found in our last chapter; and we shall now proceed to give some examples of monopolistic enterprises that have been undertaken by modern governments in various parts of the world.

CHAPTER II

FISCAL AND OTHER PUBLIC MONOPOLIES

IN addition to those artificial monopolies which may be produced, as we have seen, by grants made by the sovereign to individuals or companies, there is another type of artificial monopoly already mentioned that requires separate treatment. Where the State takes over the railway system it takes over what is, generally speaking, to a large extent a natural monopoly; but where it takes over the tobacco trade it creates an artificial monopoly. For such a proceeding it is not possible to find any complete economic justification. At first sight, indeed, it would seem to be utterly bad except to a State socialist, who would regard it as a step towards the millennium. It might therefore be supposed that as the economic policy of nations improves—if indeed it may be expected to improve—monopolies of this type will gradually disappear. But such an inference would be too hasty; for, apart from economics, these State monopolies often arise from practical considerations of the greatest weight. A people already

groaning under taxation often complains least of that from which it really suffers most; and the net profit upon a State monopoly is an insidious form of taxation which escapes notice even more easily than an indirect tax. Even economists have regarded some of these revenue monopolies with high favour, notably M. Wolowski, who writes: "Tant qu'existeront les besoins du Trésor, le tabac paraîtra un des moyens d'y satisfaire, et la régie une des meilleures formes d'exploitation d'une matière essentiellement fiscale." Certainly the tobacco trade seems to be better adapted for State management than almost any other. And as tobacco is a not altogether harmless luxury, something may be said for making it dear. Further, not only does the tobacco monopoly in France, Italy, and Austria yield a large revenue, but as a wheel in the machinery of taxation it works more fairly than the English tobacco duties, under which the same amount of duty strikes the twopenny cigar as that which is imposed upon a half-crown cigar of similar weight. To the English taste French cigars are bad and Italian worse; but Austrian have a good flavour. The Austrian traveller always takes cigars when he travels abroad, and professes the utmost contempt for the inferior (Free Trade) article manufactured in Germany. And your Austrian publicist grows quite enthusiastic on the subject. "We should be an ideal State," he is fond of saying, "if all our administration were as well managed and

as successful as the tobacco department."[1] Two extracts from letters received by the present writer will serve to illustrate the theme. The first is from a Viennese publicist: "In Oesterreich jedermann mit dem Tabak Monopol zufrieden ist, die Steuerzahler, die Raucher und der Finanz minister,"[2] and the writer went on to explain that in importing from Cuba (where there is a Trust) the Austrian Tobacco Régie is able to get good terms. The non-smoking taxpayer is pleased, because close upon 100,000,000 gulden are raised annually without sacrifice on his part: and the smoker is content because tobacco is "cheaper and better than anywhere else in Europe!" No doubt in the large towns of Prussia and Saxony cigars of equal quality (and far better cigarettes) can be had at a cheaper rate than in Vienna or Prag. But in a German village no one expects to be able to purchase good cigars, cigarettes, or tobacco. In an Austrian village (even in half-Asiatic Poland) the same brands of cigars can be had at the same price as in Vienna. Thus the favourite argument for an Imperial Postal Service is reproduced on behalf of the tobacco monopoly.

[1] For statistics of the production of Austrian tobacco, see *Mittheilungen des. h. h. österreichischen Finanz Ministeriums*, which appear every four or five years. For criticism, see Mr. Wickett's "Studien über das österreichische Tabak Monopol," published in *Finanz Archiv*, xiv., for January, 1897. Mr. Wickett studied at Vienna under Professor Philippovich.

[2] "In Austria everybody is well satisfied with the State monopoly of tobacco—the taxpayer, the smoker, and the Minister of Finance."

My second extract shall be from a letter I received from an Austrian economist, who was then Secretary to the Chamber of Commerce in Brunn. He says, with a cautious mixture of praise and blame :—

"The Austrian tobacco monopoly supplies the poor consumers at the same price with better cigars than competitive industry in some German states, *e.g.* Bavaria. But it empowers government to distribute according to favour the posts of cigar-dealers just as some corporations are empowered to license victuallers, apothecaries, etc."

Patronage is the main political danger of State enterprise in all countries, and it seems to be unavoidable. It is difficult to see how a satisfactory State competitive examination can be instituted for the appointment of retail dealers in tobacco. Even with Representative Government and a wholesome Press this objection is almost conclusive against the municipalisation or nationalisation (save when there is urgent need of revenue) of a competitive industry.

Foreign countries do not recognise the cheapness of Austrian tobacco and cigars. It is not thought worth while to assign any figures to the tobacco exports of Austria in our Customs Blue-book.

A State monopoly in the cultivation of the tobacco leaf was successfully established some years ago in Japan; a succinct account of it recently prepared

by Mr. Nuo[1] provides us with authentic details. A tobacco tax was first systematically established by the Japanese Government in 1876; in 1894, when it became necessary to obtain a large increase of revenue, it was determined to substitute a government monopoly for the stamp duty on manufactured tobacco and for the business tax previously paid by manufacturers and dealers in tobacco. The law of leaf tobacco monopoly was enacted in 1896. The following were the principal provisions:—(1) Every cultivator of tobacco leaves must acquaint the government, in writing, with the area of his plantation. (2) His tobacco leaves must be examined by government inspectors both before they are gathered and after they are dried. (3) After drying, the leaves must be brought before the end of March to places appointed by the government. (4) After inspecting the leaves and classifying them according to quality the government pays the growers according to a fixed schedule. (5) Foreign tobacco leaves can only be imported and sold by the government. (6) Every manufacturer of tobacco and every dealer in leaf tobacco must apply for an annual licence costing 50 yen in respect of each establishment.

This law has now been revised and the monopoly has been made more complete. By an Act of April 29th, 1904, the cultivators are obliged to grow

[1] Director of the Tobacco Monopoly Bureau; see *Japan by the Japanese*, pp. 431–4. London, 1904.

tobacco according to the methods and processes prescribed by the government. If a cultivator, for no sufficient reason, fails to deliver to the monopoly office the quantity or number of leaves officially estimated, he is required to pay the value of the estimated deficiency. There is a provision also, which seems to be in imitation of the German Kartells export system, that leaves may be sold to exporters by the government at special prices. The results to the revenue of the new system have been highly satisfactory; the tobacco revenue under the old system yielded just under 3,000,000 yen in 1896. The leaf tobacco monopoly showed a slight loss in 1897; but in 1898 it yielded a profit of $4\frac{1}{2}$ millions, and rose to 12,800,000 yen in 1901, the last year for which figures are given by Mr. Nuo. Since the war began the monopoly has been extended and the revenue increased. Whether the new system has justified itself economically is more doubtful. We have unfortunately no statistics as to the increase in prices; but the area of tobacco fields under cultivation has decreased, and the harvest gathered was less in 1901 than in any of the seven preceding years, while the number of cultivators, which stood at 897,000 in 1896, had fallen to 244,000 in 1901.

The Japanese Government has also created three State monopolies in its new dependency of Formosa. The first, and by far the most productive from the point of view of the revenue, is that of opium. The

Civil Governor, Dr. Shimpi Goto, remarks that the habit of smoking opium is pernicious; "but," he adds, "when the Japanese took possession of Formosa they found there a population more or less addicted to the use of the drug." It was therefore decided to abolish the practice by degrees:—

"Only those who were already addicted to the use of the drug to the extent that it occasioned them intense pain to deprive them of the pipe are now permitted by a special warrant, which they are obliged to procure, to continue its use. To commence opium smoking is strictly forbidden, or even to continue its use unless it can be shown that abstention is impossible. The government monopoly of the article was expressly established to facilitate the final extinction of the opium habit."

This sounds highly satisfactory. But it is rather alarming to learn that the revenue derived from so very virtuous a monopoly amounts at present (1904) to about £4,000,000 a year. The inhabitants of Formosa number less than 3,000,000.

The salt monopoly also is said by the same authority to have been established for benevolent purposes by a paternal government. Under the first Japanese Governor, "many of the salt fields were purposely destroyed, 'and a sort of corner' was created with an alarming rise in the market price." The establishment of the monopoly is said to have encouraged produc-

tion so that "Formosa now actually exports salt to the mother country." The revenue is trifling; only about £50,000 per annum.

Formosa enjoys a natural monopoly in the production of camphor; but when the Japanese seized the island, they found the industry in a precarious state. Camphor trees were being cut down recklessly, and the manufacture was carried on under very primitive conditions. A government monopoly was therefore established with three patriotic and philanthropic objects: (1) of protecting the trees, (2) of improving the method of production, and (3) of placing the industry on a secure footing. It will be safe to add to the three objects mentioned by Dr. Goto the two following, namely, (4) to raise the price of camphor, and (5) to obtain as large a revenue as possible. Possibly even the two last considerations may have been the governing ones, for Dr. Goto goes on to say: "The world's consumption of camphor is computed to be about 8,000,000 lbs. weight per annum, and the production in Formosa is regulated accordingly." The yearly yield of the revenue is about £875,000 a year.

The opium monopoly in India is defended on moral as well as on economic grounds. If the moralist had his way altogether, the use of the drug would be prohibited except for medicinal purposes. By means of a government monopoly, restriction is combined with revenue, and a compromise is effected between pro-

hibition and free sale. An analogy readily suggests itself nearer home. Like tobacco, intoxicating liquor (or its ingredients) has long held an honoured place among the "essentially fiscal materials" of Western civilisation. But the moral difference between the two is enormous. Excess, which in the first is a pardonable and unimportant folly, is in the second a huge and devastating vice. The Easterns have found one substitute for both; and the history of the opium monopoly in India, under the fostering care of English rulers, proves that the Eastern evil is at least as serious and at least as remunerative as the Western. But it is in the Western civilisation, and in the new world which its colonies have created, that we look for experiments and experience. If among tobacco monopolies Austria leads the way, Switzerland claims the priority in the monopolisation of alcohol. There, as in Germany, the temperance crusade is directed against "Schnapps"; and the moral object which underlay the establishment of the monopoly in 1887 was the substitution in the popular esteem of light beers and wines for spirits—an object very similar to that which dictated the reduction of the duty on French light wines in our own Budget of 1860. English and Swiss experience alike prove the greatness of the power which financial considerations wield over popular taste. Just as finance has produced the remarkable ups and downs of port and claret in English popular esteem during the eighteenth and

nineteenth centuries, so the Swiss monopoly is fulfilling by direct means, and with far greater precision and rapidity, the purposes of its existence.[1] In five years the consumption of spirits declined 25 per cent. (30 per cent., according to a late report), and that of beer rose to the same extent, while wine remained steady. The monopoly is in part federal, in part cantonal, and in part municipal; and it may well be that this division of labour increases the probability of good administration and diminishes the opportunities for bureaucratic corruption. The annual net profit to the Swiss State since the establishment of the monopoly has been over £200,000 on an average.[2] The Gothenburg system in Sweden has proved equally profitable and elevating, the average annual consumption of spirits per head having been reduced from 12½ quarts in 1871–5 to 7½ quarts in 1886–90. But it cannot be said that our opium monopoly in India has exhibited the same parallelism in distributing morality and accumulating profit. The opium monopoly seems to be the only great Government monopoly which has made its chief profits by exportation. So far as the export trade was concerned, the production

[1] Article XXXII. of the Constitution was modified, so that drinking-places and the sale of spirituous liquors should be excepted from the guarantee of freedom of trade and industry; and the confederation was authorised to regulate the manufacture and sale of alcohol by legislation.

[2] See Fabian Tract, No. 85, on liquor licensing—an excellent monograph by Mr. E. R. Pease.

of opium was controlled by the East India Company with a single eye to revenue.[1] Some insight is given into their method by an ingenious passage in the works of the elder Mill, in which (after explaining the danger which threatened the Company from the competition of Malwa opium so soon as the territory between Malwa and the coast was pacified and transit became secure) the philosopher proceeds: "To obviate this evil we entered into treaties with the chieftains in whose territories the opium is grown and obtained their consent to limit the quantity grown in their territories and to sell the whole of it to us."

In India itself the consumption of opium was, however, discouraged or repressed even by the Company; but the greatest efforts were made to suit the drug to the Chinese palate, and for that purpose experts and commissions were regularly despatched to China during the first half of the last century. Nor were these efforts unsuccessful. The opium revenue of the Company, and afterwards of the Indian Government, grew steadily for eighty years. The sale of opium in India was repressed out of moral solicitude for the population of India; its sale in China was pushed in their financial interests.

[1] Yet Mr. Cobden once said that if we took the whole value of our opium exports to China for forty years and put against them the cost of armaments and the Consular Service which had been employed to foster the opium traffic we should be found to be heavy losers in the transaction. Since the above was written a valuable monograph on the opium trade has been published by Mr. Joshua Rowntree.

THE CURRENCY

The most ancient and universal of all government monopolies remain to be mentioned. It takes us back to the very beginnings of commerce and civilisation, for coinage had hardly been invented when it became recognised as the proper function of government and even a badge of sovereignty. In the Persian and Roman empires the coinage of gold was always regarded as an imperial attribute, and if a satrapy or a municipality were allowed the privilege of copper, or even (in favoured cases) of silver mintage, it was only on account of the slowness, the difficulties, and the dangers of transit. But the monopolisation of currency by the government depends for its justification, to a large extent, upon the principle that it should not be made a source of profit; and the very considerations which interested James II., Frederic the Great, and the present Sultan in monetary theory, are those which have led every decent ruler, who claimed the manufacture of standard coin as his sole prerogative, to lay down the rule that the seignorage charged upon the mintage of standard coin shall only cover the cost of mintage. The care with which the British Government has regulated coinage and abstained from regulating credit, and the wonderful perfection of our currency and banking system, help to mark the proper limits of direct governmental

intervention in this important sphere. There are, however, indications of a movement in certain enterprising municipalities, for the purpose of enabling a local authority to obtain statutory powers to enter into this field and to develop a paper currency for the convenience and even the relief of its ratepayers or shareholders.[1]

The project—so long as it goes no further—will excite more amusement than consternation in banking circles.

POST OFFICE

Popular opinion would probably regard the monopoly of the Post Office as belonging with equal propriety to the Government; and even so ardent a Free Trader as the late Professor Thorold Rogers has given the Post Office as an example of a service which the State can perform at a far better and cheaper rate than any private individual or company, "and one for which there are sufficient checks furnished against mismanagement." Adam Smith did not go so far. He only said that the Post was the one service which was generally undertaken by governments. But it is extremely difficult to justify this confidence by an appeal to experience. Every sort of difficulty seems to beset and baffle attempts at a comparison between the profits of the same

[1] Cp. some recent debates in the Glasgow City Council where appeal was made to the experience of Jersey.

undertaking under private and public management. A government concern has all kinds of privileges and exemptions which do not appear upon its balance-sheet. Thus—to take a single example in Great Britain—the Telegraph Company had a rateable value which was arrived at after the extra value given to the undertaking by the legal monopoly which it enjoyed had been taken into consideration. But when the Postmaster-General took over the undertaking it was specially provided by statute (31 and 32 Vict. cap. 110 sec. 22) that telegraphs should only be assessable and rateable "at sums not exceeding the rateable value at which such land, property, and undertakings were properly assessed or assessable at the time of their purchase." On a wide view it may well be doubted whether governments have more than barely justified themselves in the monopoly of the Postal Service. In this country if the profits are large the cost of postage of both letters and parcels is exorbitant, and the services for short distances in large centres of population are so slow that much money is wasted upon telephonic and telegraphic messages. To charge the same price for a letter from Westminster to Kensington as for a letter from London to Calcutta is surely preposterous, as it is equally preposterous that the former should require six or eight hours for delivery. We have nothing to correspond with the local post of the German municipalities; and the jealousy with which private undertakings,

formed to supply the want, have been suppressed witnesses to the rapacity of the Treasury and the unwisdom of the legislature and the courts. It is arguable that the equalisation of postal rates within the kingdom has administrative conveniences which outweigh its injustices and disadvantages, and that in any case security is incompatible with enterprise; but the most ingenious apologist will hardly deny that the early establishment of the postal monopoly was a grave misfortune for the more populous parts of the country. It is admitted, however, that if any gigantic operation that admits of profit is permissible to a Government Department, the regimental monotony of the postal service gives it a natural right of priority. But its extension cannot be contemplated without uneasiness. The nationalisation of the telegraphs was accompanied by a grave public scandal, and the subsequent history of English telegraphs, though more respectable, is not exhilarating. Our telephone service is almost the worst in the world; the loss of temper and business which has been suffered by English business men owing to the muddling of this service by the Post Office and National Telephone Company is incalculable. Here certainly a field should have been allowed to municipal activity, and it may be hoped that larger instalments of devolution will follow shortly, so that in important local centres the transmission of intelligence may be in the hands of the ratepayers, and the

service may be cheapened and quickened under the stimulus of a more direct public control.

The range of our inquiry excludes adequate discussion of a problem so vast and peculiar as the land question—a question that has puzzled every government at every period of history. To-day the problem is both rural and urban; it differs widely in different countries; nay, more, a careful study of the particular conditions which prevail in different parts of the same country will reveal distinctions between localities of the most fundamental kind. Indeed, it may confidently be surmised that in England, at any rate, land monopoly is, generally speaking, an artificial rather than a natural condition, and that when a more normal system has been restored, the remaining grievances will be settled by finance of a local rather than of an imperial character.

In the preceding observations it has been the aim of the writer to distinguish between the waves of popular passion and the current of trained opinion. Human progress depends upon both; movement comes from the heart, or an inferior organ, direction from the brain. The improvement of society would be far more rapid if more skill and intelligence could be applied to the collection of the data and the reading of the lessons of experience. The worship of progress is carried to an absurd extent. The strength of every current or cross current is exaggerated by an impostor who wishes to persuade statesmen to

swim with it until it leaves them stranded on some particular shore to plough some particular stretch of sand.

Those who argue from the American experience to a large system of State monopolies quite apart from distinctions in their subject-matter can represent themselves as aiming at a very high standard of civic morality. They point out that a nation which relies entirely upon private enterprise is only seeking its own immediate interests, that benefits maturing only after many years cannot be the objects of private enterprise, that it is, or ought to be, otherwise with society. Society, we are told, has a duty to the future. If the free play of private enterprise blights the growth of coming generations for the sake of present profits, then society as a whole must assume direction.

"The neglect of this principle," said an American writer a few years ago (1892), "has wasted our forests, prematurely exhausted our land, built countless unnecessary railroads, prevented the growth of new industries, covered our western prairies with bankrupt farmers, and built up gigantic private interests which threaten our political stability."

It is no doubt true that America would have been to-day in a better condition politically and economically if she had seen in time the value of central administrative control, but her advantage would have

been tenfold greater had she also avoided the evil of prohibitive tariffs.

Protectionist countries may congratulate themselves upon the support which the new doctrines are giving to combinations in restraint of trade; those which have put into practice the precepts of Adam Smith will prefer surely to fall back for further guidance upon a splendid dictum of one of his greatest contemporaries:—

"The spirit of monopolists is narrow, lazy, and oppressive: their work is more costly and less productive than that of independent artists; and the new improvements so easily grasped by the competition of freedom are admitted with slow and sullen reluctance in those proud corporations, above the fear of a rival and below the confession of an error."

The censure which Oxford provoked from Gibbon is certain in the end to be deserved by every company or corporation which succeeds, or exists, in virtue of a monopoly.

CHAPTER III

MONOPOLIES OF TRANSPORT

FROM the distribution of news and parcels to the distribution of passengers and goods is no long step, and the inquirer is now indisputably within the domain of natural monopoly, which here subdivides into private and governmental. Vehicles of all kinds, horses, bullocks, and other beasts of burden,[1] are for the most part in private ownership in all civilised countries. Roads, on the other hand, are generally owned, maintained, and repaired by the public.[2] In England they have long been a local service. Formerly repaired either by individuals *ratione tenuræ*, or by tolls, or by the justices of the peace, with the help of a local *corvée*, they are now maintained out of the rates by the local authorities. When railways were first built, private carriages and

[1] On the Continent the *Post* service is generally an exception whenever it is intended as a substitute for railways. In Switzerland it is completely in the hands of the government, under a very curious system.

[2] Cp. Adam Smith's *Wealth of Nations*, bk. v. ch. i. He denounces the French system of imperial road-making.

engines were run on the lines, and paid tolls to the company. In the United States rich men still keep private cars for railway travelling. In England private waggons are still kept by manufacturers and contractors. When Parliament by private Act empowers a company to construct a railway line through a given district, it does not consider itself to be in any way debarred from authorising rival lines in the same area. The monopoly of a ferry seems to be the only monopoly of transit which is favoured and conserved by the common law in England. By our common law the monopoly of a ferry was always jealously safeguarded, though it was held that its area must depend upon the needs of the public for passage, and that it would be proper to admit competition where the monopoly imposed unreasonable restraint of trade. The owner of the ancient ferry was, subject to these considerations, protected by law in his assertion of an exclusive right against the rest of the world;[1] but the grant of a ferry was held to carry with it an obligation—the owner was not allowed to suppress his ferry, or even to put up a bridge in its place, without a writ *ad quod damnum* and a licence; and he was compelled to maintain a reasonably frequent and regular service. The problem of transportation by rail and canal is so interesting,

[1] For the fact that a ferry is a legal monopoly, cp. 9 C.B. 26. The nature of a right of ferry is elaborately discussed and explained in *Huzzey* v. *Field* (1835), 2 Cr. M. & R., p. 432.

and has so important a bearing upon Trusts and combinations, that it will be considered at more length.

It is often asserted, quite erroneously, that monopolies of traffic and transport were introduced by the invention of railways. Thus Mr. Baker,[1] in an interesting monograph, speaking of transportation, makes the almost grotesque remark that

"a century ago the world had comparatively little need of railways," and adds that "the King's highways were open to everyone [as are Mr. Baker's monopolistic railways], and though monopolies for coach lines were sometimes granted and toll roads were quite common, there was no possibility for any really harmful monopoly in transportation to arise, because the necessity of transportation was so small."

If there was so small a necessity for transportation, why were railways built with such feverish rapidity at such vast expense as soon as the invention became known? But Mr. Baker has clearly heard nothing of the local dearths and national famines which in England preceded the making of canals, the improvement of roads, the invention of railways, and the abolition of the laws restricting the mobility of labour and the importation of corn and other necessaries. There is, indeed, nothing new in monopolies of transport. Substitute trains for coaches, add the steamer to the mer-

[1] *Monopolies and the People*, by C. W. Baker (1889).

chant vessel, the tramway to the omnibus, the bicycle and motor-car to the carriage, the locomotive to the cart, the canal to the navigable river, and it is obvious that recent developments and inventions, which have cheapened and expedited to such a marvellous extent local and international communications, have multiplied competition or greatly reduced maximum charges at the same time that they have enlarged the sphere of natural monopoly. When we use the term "monopoly" in this relation we do not generally mean more than this: that the undertaking in question enjoys a margin of superiority in comparison with other competitors on certain lines of transit, and is to that extent able to fix prices and conditions arbitrarily for its own advantage.

In two great industrial countries, Great Britain and the United States, there has never been any strong movement in favour of the nationalisation of railways. It has been the general policy of the courts and of the legislature to fix rates as far as possible, to encourage competition, and discourage the amalgamation of lines, while both the administration and the courts of law have endeavoured, not always with success, to prevent discrimination in favour of particular manufacturers or merchants. Our own Parliament, for example, has twice refused to sanction even the union of the comparatively small Glasgow and South Western Railway Company with the English Midland, owing to the objection of local traders,

who feared that the monopoly produced by amalgamation would end in monopoly freights. Parliament has always fixed the "maxima" on the grounds that no yard of a man's land may be taken without his consent, and therefore they have a right to interfere. If you could buy a right of way voluntarily, you might charge what you please, like the Chichester and Selsey Light Railway. The competition of railways is a competition for accommodation and service, not for rates. Much more famous than the action of Parliament in this and some similar cases is the blow recently struck at Mr. Pierpont Morgan and other financial amalgamators in the *Northern Securities Case*, decided April 9th, 1903, by the United States Circuit Court of Appeals, and afterwards confirmed March 16th, 1904. The case arose out of the "Sherman Anti-Trust Act" ("an Act to protect trade and commerce against unlawful restraint and monopolies"). Two of the defendants—the Northern Pacific Railway Company and the Great Northern Railway Company—each own a line of railway extending from St. Paul and Minneapolis across the continent to Puget Sound. These were always regarded as parallel and competing lines, and did, in fact, for many years after they were built compete actively for traffic.

In 1901 a few of the chief shareholders in these two lines formed a third company—the Northern Securities Company—which was to acquire most

of the stock of both lines and so place the control of the competing system under one head. By April, 1903, it owned 96 per cent. of the Northern Pacific Railway stock and 76 of the Great Northern Railway Company stock. This scheme, in the words of Judge Thayer, "destroyed every motive for competition between two roads engaged in inter-state traffic, which were natural competitors for business, by pooling the earnings of the two roads."

Now the Act in very general language denounces as illegal "every contract, combination in the form of a trust or otherwise, or conspiracy in restraint of trades or commerce among the several states or with foreign nations." This generality of language was held to indicate that Congress meant to include in the prohibition every combination which directly and substantially restricts inter-state commerce, whatever its form. It had already been decided in cases under the Act that "restraint to be illegal need not be unreasonable or partial," so that any agreement between competing railroads which restricted the right of either company to fix its own rates is illegal, even if the rates so fixed are reasonable. The real control of a corporation is in its stock, and any combination by which the majority of the stock of two competing railroads is held by one (*ad hoc*) corporation is illegal, since it destroys the motive for competition, even while the separate boards of directors continue to work their lines.

Having thus decided that the object of the Trust corporation was clearly illegal, the Court went on to consider whether the Trust was protected by its New Jersey charter. A charter granted by the State could not be used to defeat the will of the Congress in a matter relating to inter-state trades, "over which Congress has absolute control." It was clear, too, that the State of New Jersey had no such intention, as the enabling Act only allows persons to "become a corporation for any lawful purpose." The precise illegality of a Trust of this kind was defined by Thayer, J., in the course of explaining its effect on inter-state commerce :—

"It affects it, we think, by giving to a single corporate entity, or, more accurately, to a few men acting in concert, and in its name, and under cover of its charter, the power to control all the means of transportation that are owned by two competing and parallel railroads engaged in inter-state commerce."

It was further decided that the constitutional guarantee of liberty to the individual to enter into private contracts was partially limited by the commerce clause of the Constitution. In the exercise of the powers conferred by this clause Congress may prohibit private contracts which operate to restrain inter-state commerce directly and substantially.

It would have been no good defence that the com-

bination might really be of greater benefit to the public than competition: that being a question of public policy to be determined by Congress.[1]

Apart from the difficulties which the decision obviously throws in the way of railway combinations in America, it is difficult to foresee precisely what its consequences may be. Possibly it may lead to a recognition of the economic truth that railways must always be in a greater or less degree monopolistic undertakings. If the State does not itself hold and administer them, it must regulate them strictly by law and administration, in order to secure that its inhabitants, whether as passengers or as conveyers of goods, shall enjoy equality of treatment, and that both fares and rates shall be reasonably low. The difficulty is, of course, to hit the mean between the rights of shareholders and the rights of the public.

It is, however, a fact not generally known, and one, therefore, which should be made emphatically clear, that the case for gigantic combines, even as regards railways, has not been made out from the shareholders' point of view, much less from that of the general public. In our own country Parliament, always unstable, and often, alas! deflected from its course by the railway interest, has in recent years sanctioned two railway amalgamations. The first was

[1] See *United States* v. *Northern Securities Co. et alios* 120, *Federal Reporter*, 721.

the purchase of the Waterford and Limerick Railway by the Great Southern and Western of Ireland, which established one railway monopoly for the whole of Southern Ireland. For years before the amalgamation the Great Southern had paid a 5 per cent. dividend, since the amalgamation its dividend has sunk to 3 per cent. The still more recent union of the South Eastern Railway with the Chatham has proved a yet more ghastly financial failure. The stocks of both companies have fallen, and the South Eastern dividend has sunk from 4 per cent. to nothing! Yet the Chairman—to quote the language of a competent railway critic—sang a pæan over the rosiness of their prospects if only Parliament would sanction amalgamation; and the Stock Exchange, gullible as usual, sent the stocks booming up while the craze lasted, only to see them fall heavily (seventy points) after the event. It is sometimes urged that two railway companies are certain to exclude competition by mutual arrangement, that it is, therefore, useless for the legislature to prevent a legal amalgamation. But experience seems to prove the contrary. "It is absolutely human nature," as the Chairman of the South Eastern declared when the amalgamation was being discussed, "that when you have got two entirely different systems, carrying people and goods to exactly the same localities, competition must ensue." It is also "absolutely human nature" that a Board of Directors should become slack and lethargic when they ex-

change a competitive undertaking for a monopoly. So true is the old adage, that competition is the life of trade. Yet though the adage remains true, competition cannot solve the problems of transport.

There has been observable of late years a very striking tendency among enterprising railway companies to throw out feelers across the sea, building ships of their own, or purchasing shipping lines, and entering into agreements with railway companies on the other side. We may probably soon see remarkable developments if Parliament permits the absorption of Irish railway companies by English companies which have access to convenient ports on the west. The Canadian Pacific is already more than a Canadian railway company; its line really extends from Europe to Japan and China. The Great Eastern Railway may be described as a through line from London and the East of England to the Hook of Holland, just as the southern lines give us connected routes to Belgium and France. The policy results from a perhaps excessive estimate of the value of long-distance traffic, and illustrates the international character of trade and of its distributive agencies. Already the extension of international railway traffic has led to the institution of an international commission for the regulation of international rates and freights, with its headquarters at Berne.

RAILWAYS

An almost even balance of considerations has led different countries to adopt very different principles in dealing with railway traffic. All, or almost all, began by giving comparatively free scope to private companies. In some, however, the want of security and of individual enterprise prevented the necessary developments, and a system of State subsidies or State undertakings was found necessary in order to ensure development. The relative advantages to the State of the French and German systems have formed the subject of a lively and inconclusive controversy between interested experts and impartial economists; but it will not be fanciful to ascribe in some measure the wonderful expansion of German trade during recent years to the skill with which a bureaucratic department has worked the railways and manipulated the rates. The Zone system in Hungary is another example of governmental enterprise in a rich but undeveloped country. But the Zone fares and Zone rates have been considerably raised in recent years. Our own Australasian Colonies have piled up an immense debt in the construction of State railways, and have furnished dyspeptic writers with the argument that democratic ownership and management of railways are inseparable from gross

corruption[1]—a sweeping thesis which rests upon the magnifying of petty scandals rather than upon the broad consideration of facts and figures that should influence criticisms of public policy.

But the question of the nationalisation of railways is far too long and complicated to be entered upon in these pages; although it may be worth observing that in an age of invention and development he would be a rash statesman who should enter into so gigantic a speculation as the compulsory purchase of a whole system of privately managed railways. The English system has a great advantage over the American, in that the control exercised by the Government is far more effective. The British legislature acted wisely for railways in their infancy by handing them over to the Board of Trade, then perhaps the best officered and most enterprising of State departments. Perhaps it would have done still better if it had been more ready to act on the advice of the Board of Trade. It is difficult for us in an age when scientific wonders are expected daily, and vast sums lavished on apparently impracticable projects, to realise the very modest views which were then held about the future of railways. In the early forties

[1] Mr. Lecky, in his *Democracy and Liberty*, ignoring the influence of a free and vigilant Press and of enlightened public opinion, asserted that "public works are far more dangerous under a Democratic Government than under a Despotism." If so, the officials in the Russian service should be less corrupt than the officials of an Australian railway bureau.

Mr. Hudson and other rich railway projectors started the idea of a railway to Scotland; and the Government of Sir Robert Peel adopted a course of which there is said to be no other example in the entire history of railways. They appointed a Commission, not to settle whether there should be a railway, but to map out what should be the proper line of a railway to Scotland. The Commission was of a scientific character. It usurped the functions of an expert engineer. Indeed, its establishment resembles one of those extreme instances of State interference in trade matters which we should look for in Hungary or New Zealand, and in any place or time rather than Great Britain under Peelite administration. But if the action is unexpected the reason is even more astounding.

"As it was known and firmly believed to be absolutely impossible that there should ever be more than one railway in Scotland, it was considered of the highest public importance that the best scientific power of the country should be brought to bear on the choice of the line—and upon that principle an inquiry was held and a report was made in favour of a line which now crosses Shap Fell."[1]

It follows that the best and most far-seeing minds in the early forties had no conception of the magnitude of the transformation which was to be brought about; and it is all the more creditable to the Govern-

[1] See *Hansard*, 3rd series, vol. 325, col. 1,401.

ment that the Railway Regulation Act of 1844 left perfectly open the question of State purchase and State management.[1] In 1865 the Royal Commission which had been appointed to consider the advisability of State purchase reported with only one dissentient voice (that of Sir Rowland Hill) in favour of maintaining the *status quo.* Most publicists and statesmen concurred, though it is interesting to recall the fact that Mr. Gladstone, in 1865, "looked with considerable interest to that limited portion of the question which is expressed by the word 'Ireland.'"

Ireland was suffering from want of railways, and there were probably many lines which might have been built with advantage to the country and without loss to the Government. But the case must be a very strong one[2] that calls for the interposition of a central

[1] 7 and 8 Vict., c. 85. By Section 2 option was given to the Treasury to purchase future railways at twenty-five years' purchase of annual profits, after the first lease of twenty-one years had expired. Section 4 states: "It is expedient that the policy of revision should in no manner be prejudged by the provisions of this Act, but should remain for the future consideration of the legislature upon grounds of general and natural policy," and adds that it is not the intention of the Act that the public resources, if called into use, "should be employed to sustain an undue competition against any independent company or companies" (*i.e.* companies formed before the Act of 1844).

[2] The writer does not express an opinion as to whether the case of Ireland, certainly strong, was strong enough to have overweighed the objections. It must be recognised that there are some races which cannot go forward unless they are propelled. The question came up again in the Debate on the Address (February 17th, 1899), and the *Times* wrote strongly in favour of the nationalisation of the Irish lines. See *Times*, February 18th, 1899.

government upon a scale so enormous. The Commission of 1865 had to consider whether the State should take over, roughly speaking, one-tenth part of the property of the country. Theoretically, of course, there is a half-way house between State purchase and State management. But practically the one would have involved the other, for the advocates of State purchase were all in favour of State management. Every Chancellor of the Exchequer who has had to frame a budget agreeable to his party knows how difficult it is to avoid an unequal distribution of public funds. But what would be the effect of a proposal which involves *inter alia* the nationalisation of about half a million employees? Is this gigantic political weapon to be put into the hands of the dominant political party? And is the House of Commons to be distracted with all the petty details of railway management and railway patronage for the sake of the difference between a governmental and a regulated monopoly?

If it were true, as Mr. Lecky asserts, that as private bribery afflicts an oligarchy so public corruption is the canker of democratic government, then Englishmen would refuse to be entrapped by the allurements of State railways. It is difficult for a government to avoid the temptation of bribing localities by public works and concessions, nor can we be certain that successors of Walpole and Pitt would prove unequal to those great men if equal weapons were provided.

There are two further considerations: the first relates to purchase. The State nearly always makes a bad bargain, at least for the living generation of taxpayers. If it made a good one it would be accused of confiscation. We have learned the lesson of purchase in the case of telegraphs, when the State had to pay more to an insolvent company than it would have cost to construct new lines. And even the moral merit of a bad bargain is usually spoiled, as in that instance, by a public scandal. The second point to be considered is whether the railway system in England can fairly be called a monopoly. In the first place, there are many competing lines or partially competing lines. And it was stated by Sir M. Hicks-Beach in the House of Commons during the debates of 1888 that at three-fifths of the railway stations there is competition by sea.[1] There ought also to be as regards the transit of goods effective competition by river and canal.[2] In some country districts light railways are an additional factor. Motor-cars are already a public nuisance, and may in time develop into a public convenience. In urban districts trams, buses, and a survival of pedestrianism help to keep down fares. Then there are *potential*

[1] *Hansard*, May 4th, 1888.

[2] Canals have fallen back so much that the Chancellor of the Exchequer on the occasion above referred to intimated his willingness to consider the question of State purchase. The neglect of canals during the last fifty years has been one of the worst features of our economic policy.

lines—a valuable asset to a competent statesman, who should try to arrange for a reduction of rates. Although there is so far a natural monopoly that a very strong case can be made out for strict State control such as that which is enforced in England, partly by statute through the Railway and Canal Commissioners and partly by the administrative discretion of the Board of Trade, yet in a thickly-populated country abounding with the means of transport and transit the forces of competition are constantly in motion—or promotion; and if proper means were taken by the central and local authorities to safeguard and develop our canal system, no general scheme of railroad nationalisation would be seriously entertained.

An interesting case about the Grand Junction Railway Company, which was decided in the summer of 1844, shows how the positive action of the legislature may sometimes effectually discourage monopoly. It was stated that there existed on the lines concerned "a real active competition of carriers on the railway," which did not exist, and was supposed to be practically impossible three years earlier.[1] This healthy change was attributed with good reason to the provisions of "An Act for regulating railways" (August 10th, 1840),[2] confirmed by an amending Act

[1] See *Reg.* v. *Grand Junction Railway Company*, 4 Q.B. 18 (1844), and cp. also *Reg.* v. *The London and South Western Railway Company*, 1 Q.B. 588 (1842).

[2] 3 and 4 Vict., c. 97, sec. 7–10.

two years later. Up to that time the law of by-laws and regulations, so far as they affected railways, had been in a thoroughly unsatisfactory condition. It was not probable that a country justice would have much insight into the workings of monopolistic companies, or into the principles upon which public sanction ought to be given to their by-legislation. But the fact remains that until 1840 "the approval or concurrence" of a justice of the peace or a court of quarter sessions was usually the only legal formality interposed between the making of a by-law and its coming into force. By the Act of 1840, section 9, it was enacted

"that it shall be lawful for the Lords of the said Committee (the Board of Trade) at any time, either before or after any Bye-law, Order, Rule, or Regulation which shall have been laid before them as aforesaid shall have come into operation, to notify to the Company, who shall have made the same, their disallowance thereof, and, in case the same shall be in force at the time of such disallowance, the time at which the same shall cease to be in force; and no Bye-law, Order, Rule, and Regulation which shall be so disallowed shall have any force whatsoever, or if it shall be in force at the time of such disallowance, it shall cease to have any force or effect at the time limited in the notice of such disallowance."

In the case of the Grand Junction Railway Company it was stated in so many words that the right of the Board of Trade to interfere in order to prevent

any railway company's by-laws and regulations from excluding strangers from the safe and profitable use of the railway had probably given rise to a real competition. The establishment of the supervision of all railway by-laws and regulations by a (theoretically) competent body of experts paid by and responsible to the public was certainly a great and fruitful innovation. For many bad by-laws would never be challenged, and even if they were challenged, the courts could not make allowance so freely as a government department for considerations of economic policy and public advantage.[1] In the thirties and forties the Board of Trade, with men like Porter, Deacon Hume, and MacGregor, possessed perhaps a better staff than any other government department; and it was also fortunate in passing for four important years under the dominion of Mr. Gladstone. At any rate, in the case just referred to the opinion is cautiously expressed that this increase of powers had operated against monopoly:—

"The right of the Board of Trade to interfere in order to prevent any bye-laws, or regulations of the company, from excluding strangers from the safe, profitable or convenient use of the railways has probably given rise to a real competition."

[1] The ultimate validity of a by-law, of course, still depends upon the courts of law, and probably many of the by-laws made by railway companies would not stand challenge in the courts. A code of model by-laws for all English railways is being prepared by the Board of Trade.

A very real amount of competition may exist upon lines built and owned by one company. In the case of the Grand Junction Railway there was also a diversity, which must have been a fruitful source of lawsuits if not of accidents. One company had complete carriers' rights over various parts of the Grand Junction Railway, and provided for itself, independently of the proprietors, locomotives, carriages, "coke and watering places," separate stations, and all other necessaries, only paying to the proprietary company certain statutory tolls and tonnages.

A class of smaller carriers over the same railway hired their locomotives from the company and also the use of the company's stations and other necessary fixtures, but found their own carriages. This class also made profits and paid tolls. But in addition to tolls they had, of course, to pay compensation for the use of steam-power, stations, etc. Last came the ordinary class, which comprises the owners of private trucks and waggons. Here the man who wanted his goods to be conveyed paid the company for everything except the use of the truck, which was his own. When the rates and tolls leviable by the proprietary company are so fixed by a skilled government department that they only allow a reasonable and moderate margin of profit, it is evident that these forms of sub-competition are not to be despised.

A financial weapon which may be used with great effect, though its value has not yet been appreciated,

is rating; and great developments may be looked for when a democratic statesman is brought face to face with the taxation of large estates and monopoly rents. The English law of rating already provides an example of the discouragement which a rating authority is authorised to inflict upon a railway company unrighteously struggling after monopoly.

A railway company became possessed of a branch line (communicating with their main line and also with the lines of three other companies), and proceeded to work the branch at very low figures in order to divert the traffic from the other lines on to their own line. Consequently the sum actually earned on the branch line was very small. The principle of the hypothetical tenant in the English law of rating enabled the Court of Queen's Bench to hold that, in assessing to the poor rate a part of the branch line in a particular parish, the fact that the three other railway companies would be willing to pay a rent out of all proportion to the profit realised under these exceptional conditions should be taken into consideration in ascertaining the rent at which that portion of the line might reasonably be expected to let from year to year.[1] But the English method of rating railways is neither logical nor systematic, and stands sadly in need of revision.

[1] *Reg.* v. *L. and N.W.R. Co.*, L.R. 9., Q.B. 134, 146–7. For the question of running powers, see Railway Acts of 1864 and 1865.

TRAMWAYS

It is difficult to say whether the enormous developments of tramways and light railways in the civilised world in general, or the conspicuous backwardness in that respect of the small but hitherto enterprising country called Great Britain,[1] should cause the greater astonishment to a philosophic observer. Though the statement was made in America, it seems to have been not long ago virtually true, that a single city in the United States could claim more miles of electrical rail or tramways than all the cities of England put together. Our backwardness is well known to our neighbours, and is sometimes half-laughingly applauded. I remember, for example, hearing Professor Vambery, of Buda-Pesth, state as a fact that an Englishman could walk twenty miles as easily as a Magyar could walk two. He explained the difference by a contrast between the beautiful tramways and underground electric railway system of Buda-Pesth and the mean, wretched accommodation which accustoms the inhabitants of far richer towns in England to prefer the use of their own legs. Mr. Seward Brice, in the preface to his work upon the *Law of Tramways and Light Railways*, observes that the constant and vexatious opposition which harassed railway enter-

[1] The large development of light railways in Ireland is entirely due to State subventions.

prise between the years 1830 and 1835 has, during the last five-and-twenty years, been directed against tramway undertakings :—

"Their development and the conduct of their undertakings are alike hampered by regulations and restrictions, for the most part emanating from hostility. Steam is well-nigh vetoed, cable power is practically unknown, and electricity is looked on as a sort of Frankenstein's monster to be bound down by shackles, under the control of 'Local Authorities.'"

We do not entirely agree with Mr. Brice in the strictures here expressed or implied. For American cities are paying a very heavy price when their corrupt mayors and boards hand over street franchises to electrical and other companies by bargains that may be a vast source of profit to both contracting parties. On the other hand, it is true enough (as anyone who has observed the way in which municipal corporations play with their own by-laws can attest) that when an undertaking passes from a company to a public body the vigilance which the representatives of the public before exercised over its lessees must now be exercised by the public over its representatives.

However that may be, the action of Parliament deserves attention; for when the development of tramways called, in 1870, for the introduction of a general Act, our legislators, allowing for the differ-

ence between local and imperial monopoly (not, as is usually suggested, improvising anything new or revolutionary), admitted the principle of giving the local authority in the case of tramways—as they had given the Imperial Government in the case of railways—power to acquire the company's undertaking after a statutory period of twenty-one years, but without allowance for goodwill and without compensation for compulsory sale or any other collateral consideration.[1]

But in the Light Railways Act of 1896 no such provision is to be found. No compulsory power is given to local authorities to enable them to purchase undertakings which cannot be distinguished materially from tramways[2]; and indeed there is a special clause to provide that any amending order "shall not confer any power to acquire the railway except with the consent of the owners of the railway." Local authorities, therefore, must try to guard their own interests by insisting upon the insertion of a section giving this compulsory power in the original Order, or themselves make and own the light railway. The second alternative was adopted by the Council of the Urban District of Barking, which recently applied for, and

[1] See Tramways Act, 1870, sec. 43.

[2] In most instances, all that can be said by way of distinction is that a light railway is a tramway constructed under the Light Railways Act of 1896. One interesting feature of the Light Railways Act is that the compulsory purchase clause recognises the principle of betterment in reduction of the compensation payable to owners of land taken for the purposes of the railway.

obtained from, the Light Railway Commissioners, under the Act of 1896, an Order by which the Council was authorised to construct a light railway connecting the town with its gasworks, to convey passengers, goods, and parcels. This particular Order is of some interest, for it was the first case in England of a municipal Light Railway.[1] A fairly elaborate schedule of maximum rates was annexed to the Order, that there might be no fear of the corporation overcharging passengers and consumers.

The action of Barking has been fully justified, not only by the success of the line, which was opened in 1903, but also by an important Lancashire case. Generally the supervision of the central boards has been exercised with a proper respect for the wishes of local authorities, and reasonable protection has been afforded against the exploitation of districts by private monopolistic companies. But a little time ago the British Electric Traction Company proposed a scheme for a light railway 8½ miles in length, between Middleton, Castleton, and Oldham, no less than 5½ miles of which were (according to the *Municipal Journal*) to be con-

[1] The clause (33) which gave the Council its monopoly ran as follows: "If any person (except under a lease from or by agreement with the Council or otherwise as by this Order provided) uses the railways or any portion thereof with carriages having flange wheels or other wheels suitable only to run on the rails of such railways, such person shall for every such offence be liable to a penalty not exceeding twenty pounds."

structed in the streets of Middleton. The Middleton Corporation entered a protest against a scheme which involved the vicious principle of a dual control over streets. Finding, however, that their objections would not be upheld, they asked for the insertion of a compulsory purchase clause. But this reasonable proposal was also rejected by the wisdom of the Light Railway Commissioners. The Order has been granted, and we are left to conclude that the legislature cannot safely assign wide discretionary powers to central administrative departments. The Light Railways Act inclines to favour monopolistic enterprise at the expense of local self-government.

When we turn from land to water we are confronted with shipping rings which have a great variety of devices for artificially raising shipping freights from time to time in different parts of the world. It is very doubtful, however, whether their effects are not exaggerated. They have certainly only served as slight temporary checks on the enormous reduction of sea freights, which has been the most remarkable and probably the most beneficial feature of international trade during the last fifty years. The ignominious collapse of the great Shipping Combine is an illustrious example of the difficulties which beset monopoly when it tries to organise, or "Morganise," the ocean. It will be best to devote the remainder of this chapter to the subject of internal navigation.

During the eighteenth and the early part of the nineteenth century England gained a superiority over all other nations in roads and canals, thanks to the wealth and enterprise of its capitalists, the genius of its engineers, and its mineral supplies. Our roads during the last fifty years have been steadily improved by the local authorities, though the want of a skilled and scientific directing force has become conspicuous. But our canal system, instead of being developed, has been allowed to degenerate. Railway companies have been allowed to buy up competing canals, with the result, it is said, that excessive tolls are charged; and in some cases important waterways have been closed.[1] In France 30 per cent., in the United States 27 per cent., in Germany 23 per cent., and in the United Kingdom only 11 per cent. of inland goods traffic is now borne by water. The Manchester Ship Canal, a splendid but almost solitary example of modern enterprise in this country, has not yet proved a success from the shareholders' point of view. But it has been of immense benefit to manufacturers and merchants; for by providing a new trade route it has much reduced railway rates between Manchester and the sea. In fact, it has made Manchester an inland port, just as the great Austrian

[1] Out of 3,520 miles of navigation open in the United Kingdom no less than 1,264 are controlled by railway companies. But it is said that in many cases the latter would be very glad to sell the canals back again at the prices they gave.

Canal Scheme is making an inland port of Prague. The Manchester Ship Canal with its extensions is doing for the cotton industry of Lancashire what the Aire and Calder Navigation has done for the woollen and worsted industries of the West Riding. Where speed is not essential, the water transit should be far cheaper than railway transit for heavy goods. The evidence given before the last Royal Commission on canal traffic showed that the average railway rate is nearly four times as high as the average canal rate for the same goods. Mr. C. J. F. Atkinson, in some admirable articles published two years ago, showed that this difference is easily accounted for. First, waterways cost far less to maintain, the only wear and tear being the washing of the banks. Second, increase of traffic costs proportionately less. One old horse can move a boat-load of 100 tons, and two old horses can move 250 tons. Third, the plant costs far less. Thus an engine and trucks carrying 220 tons cost about £3,360. But a horse-barge of the same weight costs less than £1,000, and a steam-barge (which could tow three other barges of the same capacity) only costs £1,600. The cost of labour and driving power is also less for canal than for railway traffic. The wash caused by steam haulage damages the banks, and Mr. Atkinson suggests that probably the best system on important canals would be electric haulage from trolley wires carrying the current along the bank. "This could

give a speed of four miles an hour at ·041 penny per ton per mile, while horse haulage at ·077 only gives 2½ miles an hour."[1] In a Free Trade country where the rights of individual traders are safe-guarded by wise laws and institutions, where consumer and manufacturer alike are secure of such cheapness and plenty as the world can give, the only serious menace to commerce and industry arises from the possibility of a monopoly of transport; and there is probably no form of governmental action less open to objection or more certain to be fruitful in economic advantages than vigorous and scientific intervention for the purpose of extending and improving national waterways.

[1] Another English authority on transit whom I have consulted takes a less confident view of the future usefulness of our canals. He would "like to see them all bought up and turned into slow goods railways." Canal traffic, he maintains, is infinitesimal in England, and is "decreasing in all civilised countries, as far as I know." He objects to the comparison between France and England, because in France the canals are, like roads, toll-free. Naturally, therefore, the French trader sends his goods whenever he can by canal.

CHAPTER IV

MONOPOLIES IN ENGLISH LAW

GROWTH OF OPINION

IN spite of occasional backslidings the nineteenth century certainly witnessed in England a steady growth in the pressure which trained opinion exerts upon public affairs. The interests of the people have been more boldly enunciated on the platform and in the Press, more skilfully realised and interpreted in the council chamber and committee room. Take railways, for example. Continental bureaucracy has solved the railway problem in its own way. Here in Great Britain the genius of the people has preferred, as we have seen, an intermediate system of control, in which some of the evils of private monopoly are retained along with some of the advantages of free competition. We have endeavoured to preserve private enterprise without licensing the exploitation of the general body of consumers, and to avoid the necessity for State management and ownership by the development of State control. In general, we seem half unconsciously

to have tried (and not without some success) to hit, so far as these monopolistic services are concerned, a golden mean between Continental and American policy. It is now coming to be understood that natural monopolies can seldom be counteracted satisfactorily by the establishment of artificial competition, and that the substitution of national or even municipal management is not always the best alternative to an unregulated private monopoly. But many writers take a widely different view; they tell us that every department of industry even in Free Trade countries is gradually coming under the dominion of monopolies, that the bounds of industrial freedom are shrinking, and that it would be vain and foolish to attempt to maintain the dwindling forces of competition. Let us approach this question by way of a historical retrospect, which will enlarge our survey of monopolies and enable us better to understand the industrial and legal conditions of Great Britain and the United States. First of all, it is worth noticing that in very early times English law, both common and statutory, upheld economic doctrines far sounder than those which were embedded in English practice. Thus the general right to freedom in the choice of trade was vigorously maintained — by pre-Elizabethan judges, at any rate; and the only early exception of which we are aware in the list of judicial utterances is that of Chief Justice Sir James Ley, Milton's

"good Earl." Ley, according to Judge Dodridge, denied that all trades might be used equally at common law, or that anyone might use what trades he pleased; "for that God, at the original creation of man, had ordained one man to one trade and another to another; that accordingly nature had disposed men to one trade more than to another; and that no civil republic could subsist without distinction of trades." Proceeding along this line of reasoning, the Chief Justice came to the conclusion that, although at common law a man was not bound to use one trade more than another, yet "there was a distinction of trades, and a man could not use two."[1]

But, saving this dictum, the common law rule was that any man might, without any preliminary service, practise any trade in any part of the country; and it was often expressly founded on the *laissez-faire* argument that unskilfulness in the craft he pretends to practise is a sufficient punishment for the craftsman, since employment depends on skill. It is true, however, that the common law rule was subject to local customs imposing particular restraints, and that these customs of exclusion were so prevalent as to be themselves almost the rule. Whatever beneficial effects the common law may have had were defeated by the Elizabethan Statute of Apprentices. Oppressive local restrictions were

[1] 2 Rol. Reports, 392.

imposed by guilds and corporations. An unfortunate man, even after he had served his seven years apprenticeship in accordance with the Elizabethan Statute, could still be excluded from practising his trade by the custom of any corporate town.

For two centuries more the idea that it is the business of the State to fix wages and control commerce continued to flourish; and when at last mercantilism died out, and working-men unconsciously associated themselves for defence against the secret understandings of factory employers, they found themselves subjected to the new tyranny of the Combination Laws.[1] To-day in Great Britain, as in most civilised countries, labour has to a greater or less degree at length emancipated itself, and is now able, though under difficulties from which the secret understandings of capitalists are free, to avail itself of such advantages as combination may bring about in the hours of work, the conditions of employment, and the rates of remuneration. According to the authors of *Industrial Democracy* the idea of monopoly only enters into the policy of English

[1] The Combination Laws were repealed, thanks very largely to the work of Francis Place, in 1825; and the position of trade unions was improved by the Act of 1871. The Conspiracy and Protection of Property Act of 1875 made picketing illegal, and protected the public against acts calculated to deprive it of its gas and water supply. The position of trade unions as compared with employers' combinations has been much altered for the worse by some recent decisions in the courts.

workmen when they are asserting their right by demarcation or regulation to exclude other workmen (or women) from a trade. But the attempts on the part of workmen to limit production, though necessarily less numerous and less successful than combinations of employers for the same purpose, surely belong to this category; and the extraordinary notion that remuneration ought to be allocated, not in proportion to products, but by a guess at moral intentions, seems not only to have spread itself among the socialistic section of the workers, but to have commended itself to their most ingenious apologists.

"We do not wish to obscure the fact that a Standard Rate on a time-work basis does, in practice, result in a nearer approach to uniformity of money earnings than a Standard Rate on a piece-work basis. Nor is there any doubt that a considerable section of the wage-earning class have a deeply-rooted conviction that the conscientious, industrious, and slow mechanic ought in equity to receive no less pay than his quicker but equally meritorious neighbour."[1]

The conviction may well disturb our gravity, especially if we reflect upon the fate of a good worker who is also a bad man. He would evidently be paid less for making a good pair of shoes than would a good man for making a bad pair of shoes. But it will be impossible to fill in the details of such

[1] *Industrial Democracy*, Webb, vol. i. p. 285.

a Utopia until some hurricane has swept away from men's minds things deeper than "the deeply-rooted conviction"—the springs of action and the foundations of thought.

But for practical purposes under modern conditions of Free Trade and cheap transit a monopoly in the labour market can only be local and temporary, and has but little effect upon prices. A strike or a lock-out may produce disastrous results directly upon the parties involved; but the indirect wounds which it may inflict upon the general public are, as a rule, faint and evanescent.[1] There is no sign at present of any of the tremendous revolutions in the relations between labour and capital which have been predicted for the last fifty years. In England the number of trade unions is diminishing, that of trade unionists is increasing. But the increase during the last decade has not been very great; and it is arguable that the doctrines of trade unionism are softening at least as fast as the combination to enforce them hardens.

The term labour is usually taken to mean manual labour; and the critics of extreme "labour men" are apt to forget that the monopoly for which manual labour struggles in vain has been partially achieved by more intellectual forms of activity. The close corporations and guilds of craftsmen have been

[1] The small shop-keepers, however, in the towns affected by a strike usually suffer severely.

abolished, but their ideas linger in the medical and legal professions; and the monopoly which the State has wisely refused to the manufacturer has been as wisely granted to the inventor. Before the passing of the Statute of Monopolies (in 1624), the common law principle, that contracts or grants in restraint of trade were invalid if contrary to the public advantage, was often challenged and violated in practice.

The dividing line between the encouragement of inventors and the endowment of courtiers was difficult to draw but impossible to ignore; and when Coke, in explaining the Statute of Monopolies, declared monopolies to be void and against the common law, he was careful to define monopoly as

"an institution or allowance by the King, by his grant, commission, or otherwise, to any person or persons, bodies politique or corporate, of and for the sole buying, selling, making, working or using anything, whereby any person or persons, bodies politique or corporate, are sought to be restrained of any freedom or liberty that they had before or hindered in their lawful trade,"

thus excluding the cases (referred to in Noy's report of *Darcy* v. *Allen*) in which the King might grant to the importer of new things from abroad, or to the inventor of new trades or of engines tending to the furtherance of a trade, "a monopoly

patent" for some reasonable time,[1] "until the subjects may learn the same, in consideration of the good that he doth bring by his invention to the Commonwealth."

We may see from this that the restraint of trade for a reasonable time has long been recognised as a just and expedient device for the development of enterprise and the encouragement of invention. Under this ægis trading companies of merchant venturers have claimed and secured exclusive rights; and in the eighteenth century, when distant enterprises were dangerous and capital scarce, it could plausibly be urged, that unless monopolies were granted, distant trade could never be developed.[2] But those conditions no longer exist; and the formidable case which Adam Smith made out against the chartered companies of his day has been visibly strengthened by recent experience. Many sins and shortcomings are still palliated in the Old and the New World under the vague name of Imperialism; but the arguments of the economist have been reinforced by political and financial failure. Chartered companies have outlasted their reputation, and it may confidently be predicted that since the failure of the Nigerian and Rhodesian companies popular opinion and scientific judgment will severely scruti-

[1] Fixed at fourteen years by Section 6 of the Statute of Monopolies.

[2] Cp. Dean Tucker's *Essay on Trade*, pp. 67–71.

nise fresh developments of monopoly in this direction, which, after all, only mean that operators on the Stock Exchange are empowered to dupe white men, with the prospect of dispossessing, or despoiling, or exploiting black.

Artificial monopolies have developed in two other directions, both of which may be regarded as legitimate extensions of patent law. Our authors are even more favoured than our inventors; for the English copyright in books lasts for whichever is the longest of two alternative terms—for forty-two years, or for the author's lifetime and seven years after his death. A convention for the promotion of international copyright was held at Berne in 1887, and ratified by Great Britain, France, Germany, Italy, Spain, Switzerland, and some other countries.

The fear of setting up monopolies made the courts very chary of admitting trade-marks[1] to the privileges of patents; but it came gradually to be recognised that State protection of exclusive trade-marks is beneficial to the public, because they can buy with confidence when they "know what they are getting," and also beneficial to the trader, because it stereotypes and secures his custom and goodwill.[2] When a man is asserting his exclusive right to a trade-mark—

[1] Thus in 1742 Lord Hardwicke refused to protect the Great Mogul stamp on cards.

[2] The history and theory of Trade-mark Law was given by Lord Blackburn in *Singer Manufacturing Co.* v. *Zoog.*, 8 App. Cases, 29.

"monopoly is not the thing for which the one party struggles and which the other resists. On the contrary, fair trading is all for the protection of which the law is invoked; and the public, as well as the manufacturer or merchant, are concerned that infringement of trade-marks and trade designation should be prevented."[1]

It is equally plain, however, that when a patent has expired it is against the public policy to allow the monopoly of the name to continue when that of the thing is dead; and for this reason the courts refused to allow the claim of the Singer Manufacturing Company to an exclusive right to the use of the word "Singer" in connection with their sewing machines. It was held that "Singer" had come to signify a type of construction, and that the company must be content with their trade-mark. Trade-marks, like copyrights, are now protected in a great measure by international law; and as the comity of nations increases, the area for the remuneration of individual talent is certain to extend steadily.

But if some ingenuity was required by English lawyers to distinguish between the monopolies which royalty was justified and those which it was not justified in setting up, their difficulties were enormously enhanced in the case of contractual and

[1] Lord Craighill in *Dunnachie* v. *Young and Sons*, Ct. Sess. Cas., 4 S. X. 874; cp. *Blackwell* v. *Wright*, 73 N. Car. 310.

customary monopolies. Where the grant of a monopoly was in question, the criterion of legality was the encouragement of enterprise and invention; but where the monopoly rested on custom or contract, no such criterion could be applied. It was generally held, however, in cases of customary monopoly that the courts could exercise some sort of vague public control. Under this head might generally be included ferries (which have been already referred to), cranes, weighing-machines, docks, and markets. Sir Matthew Hale expounded the position of a dock-owner as follows:—

"Wherever a party happens to have the benefit of a legal monopoly, of landing goods in a public port, *e.g.* where he is the owner of the sole wharf authorised to receive goods in a given port, then he must take reasonable compensation only for the use of his monopoly."

A man for his own private advantage

"may in a port town set up a wharf or crane, and may take what rates he and his customers may agree for cranage, wharfage, etc., for he doth no more than what is lawful for any man to do, viz. makes the most of his own."

But

"if the king or subject have a *public* wharf, into which all persons that come to that port must come and unlade or lade their goods, as for the purpose

because they are the wharves only licensed by the queen, according to the statute 1 Eliz., chap. 11, or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, etc., neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter; for now the wharf and crane and other conveniences *are affected with a public interest* and they cease to be *juris privati* only. As if a man set out a street on his land, it is now no longer bare private interest, but it is affected with a public interest."[1]

But a distinction was drawn between these cases and those of public carriers and of innkeepers, who though they would be compelled to entertain travellers, were yet allowed to demand their own terms, on the ground that the public was sufficiently protected by its indefinite power to increase the number or refuse the renewal of licences.[2]

By-laws in restraint of trade were generally held to

[1] Sir Matthew Hale's treatise, *De Portibus Maris*; and also 12 East Rep. King's Bench, 538, for Lord Ellenborough's comments upon the doctrine. See later for the case of railway bookstalls, which are similarly "affected with a public interest."

[2] See 12 East Rep. King's Bench, p. 534 (1810). The decision is a complete legal answer to the claim lately made by the trade, and partially acceded to in the Licensing Act of 1904, for compensation in case of the non-renewal of a licence.

be bad, *e.g.*, that every merchant tailor should put all his cloths to be dressed to cloth workers of the same company, or that bricklayers must not plaster with lime and hair—an operation which was supposed to be annexed to the plasterers' business. But the vigour of the common law was weakened by its readiness to admit local privileges and customs; and a regulation that no member of a corporation should have more than a certain number of spindles was allowed, as tending (so it was argued plausibly) to the more equal distribution of trade. The greatest lapse of all is yet to be mentioned. In days when the modern shop was almost unknown, and almost the whole retail trade of the country was accomplished on market days, markets were recognised as a monopoly, and the monopoly was strictly enforced. There was a common law distance, an area of seven miles round any old market or fair, within which the setting up of a new market or fair, if held on the same day, was presumed to be a nuisance, and if held on a different day was "to be put in issue whether it be a nuisance or not."[1] The right of creating a market franchise was a prerogative of the Crown, and the Crown could not derogate from its grant by authorising the creation of a rival within the common law limit. But it could

[1] See *Mayor of Dorchester* v. *Ensor*, L.R., 4 Ex. 343 (1869), and cp. *The Law on Markets and Fairs*, by J. G. Pease and H. Chitty, 1899, pp. 74, 75. The common law of markets is often compared to the common law of ferries. In both it showed an exceptional tendency to favour monopoly.

rescind the grant on the ground of outrageous tolls. In the growth of shops, and the diminishing importance of markets, we have, therefore, an enormous encroachment of free competition upon one of the most extensive and sacred preserves of monopoly. Those who, alarmed at the size of many retail concerns, warn us of the approach of retail monopoly, forget that one of the most remarkable features of modern times has been the relief of the consumer from a patchwork of distributive monopolies which oppressed and hampered him at every turn.

CONTRACTS

We have now spoken of royal grants, local privileges, customs, and by-laws. The treatment of contracts in restraint of trade by both English and American courts exhibits a want of sound principle and even of consistency. The fountain to which modern errors may be traced is the judgment delivered by Chief Justice Parker in the case of *Mitchell* v. *Reynolds* (1711).[1] There is more of common law than of common-sense in the first two "observations that may be useful in the understanding of these cases," namely—

"1. That to obtain the sole exercise of any known trade throughout England, is a complete monopoly and against the policy of the law."

[1] 1 P. Williams, 181.

"2. That when restrained to particular places or persons (if lawfully and fairly obtained) the same is not a monopoly."

As if a monopoly were any the less a monopoly, or any less oppressive in *kind* because it is local!

The casuistry of modern lawyers has contrived, without questioning the authority of this judgment, to deprive it of almost all its practical bearing, and in the last ten years two important decisions have whittled away the old doctrine that restraints of trade are against public policy. Perhaps it is as well; for law and economics, though always found together, are seldom theorised together, except in the Faculty of a German university. But unless we assume the incapacity of judges to know a monopoly when they see it, and unless we agree with Lord Bowen that conspiracies of capital are not under the ban of the same common law which has made conspiracies of labour indictable,[1] then the case of the Mogul Steamship Company was wrongly decided—at any rate, the economic aphorisms which environed the decision are

[1] "It is not," he said, "the province of Judges to mould and stretch the law of conspiracy in order to keep pace with the calculations of Political Economy." The law which was moulded in the interests of capitalists against workmen must not be moulded in the interests of the consumer against what Lord Bowen called "peaceable and honest combinations of capital for purpose of trade competition." He distinctly denies that what is legal for one capitalist can be illegal when done by a combination of capitalists, vide *Mogul Steamship Co.* v. *McGregor, Gow and Co.*, 23 Q.B.D., pp. 619, 620.

deplorable. A number of steamship companies had combined to ruin "outsiders," or drive them from trade, in order to re-establish monopoly freights—"to resume their old rates of freight, rates fixed without competition." Lord Bowen seems to have thought that, as the distinction between prices under monopoly and under competition is only a distinction of degree, it is no distinction at all. If trans-oceanic steamship rates were subject to an international commission, as our own railway rates are subject to a national commission, Lord Bowen's complacent generalisations about "a country of free trade which is not under the iron *régime* of statutory monopolies" might be tolerably satisfactory. But they are not so subject; and British traders are but poorly compensated for the unchecked growth of an oppressive monopoly of transport by the flowery platitude that "all commercial men with capital are acquainted with the ordinary expedient of sowing one year a crop of apparently unfruitful prices, in order by driving competition away to reap a full harvest of profit in the future."[1]

It is, of course, absurd that a hard and fast distinction should be drawn between restraints of trade which are local and those which are unlimited in area. That part of *Mitchell* v. *Reynolds* has now been disposed of; for, in the celebrated Maxim and Nordenfeldt case, the House of Lords held the old rule, that the same monopoly which if restricted

[1] Repeated with approval by the Lord Chancellor, 1892, A.C., p. 37.

in area is legitimate is illegitimate when unrestricted, to be no longer applicable.

It has been pointed out that some contracts in restraint of trade are actually beneficial to the public. For example, a manufacturer or professional man often takes an assistant on condition that the assistant shall not leave him to practise the same business or profession in the immediate neighbourhood.

"In such a case," said Baron Parke in a remarkable judgment, "the public derives an advantage in the unrestrained choice which such a stipulation gives to the employer of able assistants, and in the security it affords that the master will not withhold from the servant instructions in the secret of his trade and the communication of his own skill and experience, from the fear of his afterwards having a rival in the same business."

In the view of the English law public policy requires that a man should not be allowed to deprive himself or the State of his skill or labour even by voluntary contract. On the other hand, public policy requires equally that he shall be able to sell on the best possible terms what he has obtained by his skill or labour; and in order to do so it is necessary that he should be able to preclude himself from competition with the purchaser. When these principles clash the question must be decided by reasonableness. In the tenth edition of his *Law of*

Contract (1903), Sir William Anson sums up by stating that

"The duration of the contract and the area over which it is meant to extend are not determining factors as regards its validity, but are elements in the general consideration by the Court of the reasonableness of the transaction."

This appears to be a very fair representation of the law in its present state of uncertainty, and we cannot help observing, in view of the very different measure which is meted out to combinations of capital and combinations of labour, that far too wide a discretion is left to judges.

Part II

TRUSTS, KARTELLS, AND OTHER MODERN COMBINATIONS

INTRODUCTORY

THE characteristic difference between the American Trust and the German Kartell is that, whereas the former is a combination in which the individual firm is entirely merged and absorbed, the latter only combines the firms into a syndicate for certain purposes, and allows the individuality of its members to continue so far as is consistent with the business policy of the federation. In the present and ensuing chapter we shall deal rather with the policy than with the organisation of Trusts and Kartells. The object of their formation is, of course, to increase profits by obtaining higher prices than can be obtained under competitive conditions. In other words, their supreme object is to create a monopoly. Thus the modern Trust or Kartell is simply a recrudescence of older forms of monopolistic combination. The main purpose which has led to the formation of Trusts and Kartells is that which has led to their formation under other names from the earliest records of economic history. Mr. Havermeyer's pedigree goes back to Thales; Mr. Leiter

is the lineal descendant of Joseph's Pharaoh. They may talk of the economies of big undertakings; but what they are really after is, of course, to raise prices by eliminating competition. The Beef Trust of New York is merely a reproduction on a gigantic modern scale of those combinations of butchers which Adam Smith so severely stigmatised in the *Wealth of Nations*. The claim that amalgamations produce certain economies and enable capitalists to make better bargains with railways, raw material, and labour can, no doubt, be made good. But the advantages thus obtained are set off by corresponding disadvantages. A business, whether distributive or productive, tends to become unwieldy and gradually decays, owing to the loss of individual interest and enterprise. A proof of this is that Trusts or Kartells seldom develop and hardly ever become a menace to society in countries where they are not protected by a tariff. In England, for example, the only instance of a trade not in its nature monopolistic which is at the mercy of combination is the retail trade in alcoholic liquor, where the tied-house principle has become dominant entirely owing to the encouragement it receives from the English licensing laws.

The consequence is that, although we have in this country many illustrations of natural monopoly, we have hardly any cases of combinations strong

enough to fix prices above their natural level; and none in which an English firm has made its price to the home consumer perceptibly higher than the price at which it sells the same article to foreign purchasers. For at the moment that such a policy were established it would pay English merchants to re-import the article from abroad. "Dumping," therefore, as a policy, is confined to countries with a protective tariff, and to the particular industries which have grown up under the shelter of such a tariff. But there are two sorts of dumping, which may be roughly distinguished as the dumping that results from strength, or scientific policy, and the dumping that results from weakness. The second variety is spurious, and is analogous to sales of bankrupt stock, or to the sales which conclude the summer season in large cities.

It may happen, of course, to any business, large or small, in a Free Trade or protectionist country that it finds it expedient, in consequence of a change of fashion, an unfavourable turn of market, an inconvenient accumulation of goods, to dispose of its stock at cost price to anyone who will buy it. With this spurious form of dumping we need not concern ourselves, but it should be borne in mind that it is often confused with the real or scientific dumping, and, being far more prevalent, makes dumping appear to be a much more serious and

significant factor in international commerce than it really is.

Another preliminary remark with regard to dumping should be made. It might be supposed that dumping would be very popular in the countries which profited by it, *i.e.* in those countries to which the abnormally cheap goods are sent; and, indeed, this was the opinion until quite recently in England. It is only during the last two or three years that in England a half-political, half-economic agitation has been fostered for the purpose, it is alleged, of protecting certain interests against the cheapness and plenty caused by dumping. For twenty years, for example, it was generally admitted that the export policy of the Austrian, German, French, and Russian sugar syndicates was of enormous and almost unmitigated benefit to the people of Great Britain, giving them an advantage in cheap sugar, which, in the period immediately prior to the Sugar Convention, was valued at eight millions a year. The expansion of our jam, biscuit, and confectionery trades was directly traceable to this cause, and far overbalanced a trifling diminution of sugar refineries. Eventually, however, the sugar refining industry and the West Indian interest succeeded in changing the policy of the British Government. In 1900 a Conference was called at Brussels, and the Convention thereupon agreed to for putting an end to the bounty system has

now deprived British consumers and manufacturers of the advantage they previously enjoyed. Bounty-fed sugar is now a thing of the past, and for practical purposes it will be more useful to turn our attention to other cases of dumping, which are carried on for the most part without the aid of government bounties. Our examples of dumping will be taken principally from America and Germany, as the American Trust and the German Kartell are the combinations against which this practice is most usually charged.

CHAPTER I

THE KARTELLS IN GERMANY AND AUSTRIA

WE have seen that the Trust is the child of English law and American tariffs. In Germany the law[1] has not permitted the formation of "Trusts"; but the tariff favours combinations of producers,[2] and accordingly a different form of organisation has generally been adopted to compass the same ends. Industrial combination in Germany is brought about in the following way. A number of firms producing same class of goods agree to hand over the control of their sales to a central board upon which they are all represented, by whose rules they are bound, and to whose funds they contribute. Every member of the Kartell—as the German type of combination is called—must open its books to the Kartell's officials and carry out the Kartell's instructions as to price and output. A firm which sells below the regulation price or offends in any other

[1] German company law is in many respects superior to British. For an informing article on the subject, by Mr. Ernest Schuster, see *Economic Journal*, vol. x. pp. 1–19.

[2] The policy of high tariffs and Trusts is often described as Millionär-Zuchtung, "the feeding up of millionaires."

way is fined, and the fine is distributed among the other members. The advantage claimed for this kind of industrial federation over the Trust is that it eliminates competitive war between the individual firms that are combined without wholly destroying their individuality. Moreover, if the Kartell is skilfully conducted it may save expenses in freight, and generally give to its members the advantages which a well-planned system of co-operation has been found to confer upon Danish and Irish farmers. On the other hand, it is objected that the Kartell tends to protect and perpetuate the unfit and incompetent firms at the expense of their efficient colleagues. Professor von Halle, a well-known authority upon this subject, declares that Kartells have often secured foreign contracts where individual firms would have failed. This may well be, as an individual firm is seldom inclined to tender for a contract on terms which would offer no prospect of profit. Another advantage claimed for the Kartell is that each firm, without changing its own internal organisation, can pursue its special line and improve its products without having the trouble and responsibility of selling them. For among its other features there is one which especially excites the interest of foreign observers and the resentment of foreign competitors. That feature is the pool, if we may so call it, or fund, which the Kartell frequently creates for the purpose of selling surplus products abroad at a loss where

they cannot be sold at a profit. It follows that the scientific theory of dumping is far more likely to be carried out in practice by the German Kartells than by the American Trusts. An American Trust, like any ordinary competitive firm, will, of course, from time to time sell off surplus stock at low prices, and the existence of a high tariff makes it probable that, as a matter of policy, the sales will be made to foreigners. But in Germany the directors of the Kartell pay a subvention or bounty to the exporting firms, raising the bounty, as Mr. Schloss says, "out of the price paid by the German consumers for goods similar to those exported." In most cases, of course, the policy is dependent upon a protective tariff, which enables the Kartell to charge high prices to home consumers. It should, however, be understood, as Mr. Schloss points out in his Memorandum to the Board of Trade (p. 297), that this policy of selling cheap abroad and dear at home is only part of the general system pursued by the German combination; the system "of selling the same thing at different prices according to circumstances, in every case charging all that the trade will bear."

Thus, as between a consumer near the source of supply and a consumer whose works are some distance away, although the price is in each case *ex* mine or works of the producer, the distant customer will be charged a lower price, lower approximately by the cost of freight from the place of production to the

factory of the purchaser, on the ground simply that his proximity to the centre of production will enable the near customer to afford to pay more money. So in a (German) district in which there is no active competition a high price is charged, but a lower price in a district where other sources of supply either actually compete, or might easily come in to compete, with the productions of the Kartells. It will be understood that, so far as this system of charging different prices to customers in different (German) districts entails upon the individual producer of the goods concerned the necessity of selling them at a lower price than that obtained for the same class of goods by other members, then under the fully developed Kartell organisation the difference is made up to this man by the Kartell, prices being practically pooled, pretty much after the manner in which the bounties in the export trade are allotted.

It is often stated or suggested by advocates of a protective tariff that the German Kartells deliberately export goods below cost price for the purpose of ruining some particular competitor in a foreign country. But no evidence of this purpose exists; and even if the motive could be shown, no instance of its success has been adduced. On the other hand, there are many examples of the advantages which German dumping has conferred upon particular industries in other countries. The reason is that bounty-fed exports from Germany are mainly either raw

materials or half-manufactured goods. Let us take a few of the leading cases. One of the largest and most powerful of German syndicates is the Rhenish Westphalian Coal Kartell. In 1902 it had a total output of 48,600,000 metric tons, of which 6,800,000 metric tons were sold abroad. The average price per metric ton sold at home was 10.45 marks, and the average price abroad was 9.84 marks; so that the foreign manufacturer (chiefly in Holland and Belgium) got his coal nearly 6 per cent. cheaper than the German. It is difficult to see how the most thorough-going mercantilist whose economics are derived from the predecessors of Adam Smith can object to receiving cheap supplies of the most important raw material of industry. The policy of the Coal Kartell has excited the utmost resentment in Germany. But the transactions of the Westphalian Coke Kartell have been even more severely criticised. M. Raffalovich, in his book on Trusts,[1] states that coke which cost 17 marks in Germany had been sold at 8 marks per ton in Austria and Bohemia, and the proceeding of the Kartell commission seemed to confirm the statement. Another authority, M. Sayous, tells us that it is often good business to buy German coal in Switzerland or Holland and re-import it into Germany.

It should be noticed that this Kartell policy is much assisted by the specially low rates of transport which the German State railways are accustomed to grant

[1] p. 22, note.

on goods intended for export. A similar policy is pursued by the Wire Kartell, which, in the year 1900, had three distinct prices—(1) for sale to German consumers, 185 marks per ton; (2) for sale in Germany for export, 170 marks per ton; (3) for sale to foreigners, 115 marks per ton. During the industrial crisis of 1900–2 enormous sales of half-finished iron and steel goods were sold abroad at very low prices. The discrepancy between the prices to home and foreign buyers of instruments of industry were often startling. For instance, the Nail Syndicate sold its goods in Germany at 250 marks a ton and abroad at 140 marks; the Rail Kartell charged Germany 115 marks per ton and Portugal 85 marks. Girders were exported at from 20 to 30 per cent. below the home price. The consequences of the sale in Holland, Belgium, and England of coal, pig-iron, rolled wire, etc. at these low prices were severely felt by manufacturers of finished goods in 1902. The most striking example, perhaps, is the transference of an important ship-building trade from Germany to Holland.

"The building of boats for the Rhine river navigation has passed over almost entirely to Holland, because the works in the Rhenish Westphalian district producing heavy plates, deliver in Holland at lower prices than in the interior of Germany."[1]

The Austrian tariff has not been strongly pro-

[1] Raffalovich, p. 28; cp. Sayous, p. 309.

tectionist as a whole, and consequently combinations to raise prices against the home consumer have been less common than in Germany. But there have been one or two very strong and carefully organised Kartells. Of these the Sugar Kartell flourished greatly in the nineties, but its teeth were drawn in the spring of 1902 by the Brussels Sugar Convention. Far the most important of the Austrian combinations now in existence is the Iron Kartell, which is supported by a very high tariff. The high prices of iron which prevail in consequence throughout Austro-Hungary are generally recognised as very bad for the country. Iron, like wood, is one of the most important of the raw materials of industry, and I have frequently heard business men as well as economists bitterly regret that the iron interest should have been strong enough to enforce its views on the tariff-making officials. All the iron manufacturers of Austria are in the Kartell, and the output of the individual firms is controlled by a central board. One of the largest iron manufacturers told me in the autumn of 1903 that his firm seldom tendered for foreign contracts, and when they did that it was rather for honour (advertisement) than for profit. This is confirmed by Herr Grunzell, who, in his book *Ueber Kartelle* (p. 217), writes that the Iron Kartell "seeks to avoid a volume of production in excess of home requirements; and its practice, therefore, is not to encourage the export trade—a

trade carried on at a lower profit than the home trade, or even at a loss." Of other producers' combinations in Austria, perhaps the most noteworthy is that which has grown up in connection with the oil trade of Galicia. In April, 1902, an agreement was made between "the Ropa," a convention of crude oil producers in Galicia, and the principal refiners, with the object of encouraging the export trade and finding an outlet for the surplus production of crude oil. This agreement is said to have had the effect of reducing the profits of the Standard Oil Company; and after prolonged warfare the latter was compelled, in 1904, to conclude an agreement with its Austrian competitors.

The duty of controlling monopolies in Germany falls rather on the States than on imperial government. The railway system, for example, is not under the imperial authority. There are the State railways of Prussia, of Bavaria, and of Würtemberg, and each of these kingdoms has its own postal service. The Prussian Government has secured all the amber mines about Königsberg. It has also displayed some originality in an attempt to control or limit one of the great combinations, not by legislation, but by participation. Several coal mines have already been acquired to supply coal for railway purposes; but the plan had been not so much to buy working mines as to secure undeveloped properties and operate them. In the summer of 1904, however,

the Prussian Minister of Commerce proposed to buy out the shareholders of the Hibernia coal mine, one of the largest in Westphalia, at a premium of 140 per cent. At the time the offer was made the shares stood at 170 per cent. premium, but they had been forced up by the competition for voting power between the Dresdener Bank, which had been buying for the government, and a number of other financial institutions representing opponents of the sale. It was explained on behalf of the Prussian Government that it happened to possess fewer coal mines in Westphalia than in other districts, but this was not regarded as the real reason for the purchase. It was stated in the Press that a prominent ironmaster, who happens also to be a nobleman, had complained in exalted quarters that the Trust would not sell him coal at the same price as it sold to the ironworks connected with it, and that thereupon the Minister of Commerce decided to intervene. It was also stated that the Minister had previously refused an offer from the Trust to be allowed a voice in fixing the price of coal — though this appears to have referred to the supplies for the State railways only, and not to that for the general public. A more satisfactory explanation was that the government, alarmed at the practical amalgamation of the great coal and iron companies and the control of both industries by a single Kartell, had determined to intervene by indisputably legal and pacific means.

Local opinion, however (which probably means capitalist opinion), was adverse; and it was plausibly argued that if the State controls the industry and the prices there will be an end to such bounties as those granted by the Coke Trust to the blast furnaces on the export of pig-iron, and to similar means for enabling the German iron trade to compete in the world's markets.

CHAPTER II

THE AMERICAN TRUSTS

UNDER the protectionist policy which has prevailed in the United States, with some temporary relaxations, during the last half century, many branches of industry have been in a greater or less degree monopolised; and the immense profits gained, or said to have been gained, by certain Trusts which have obtained a pretty complete control of particular industries have made the Trust organisation enormously popular with capitalists, financiers, and investors. But in recent years it has become the favourite object of popular odium. A strong agitation for anti-Trust legislation began in the United States about fifteen years ago; it is said to have been strengthened, if not caused, by the tremendous efforts put forth by the Sugar Trust to enforce monopoly prices by private combination. The Sugar Trust was organised in October, 1887, flourished in 1888–9, and began to decline, owing to competition, litigation,[1] and public indignation, in 1890. Its opera-

[1] In an important American Sugar Trust case it was pleaded on behalf of the Trust that from the nature of sugar complete control of

tions and their effects upon prices are worthy of more particular attention, especially as they have been recorded by an inquirer no less careful and competent than Professor Jenks.[1]

In the twelve months following September, 1886, that is, in the year immediately before the formation of the Sugar Trust, the average price of refined sugar taken monthly per lb. (omitting fractions of a cent) was eleven times 5 cents per lb. and once 6 cents, and that of raw sugar was eleven times 4 cents and once 5 cents. In the twelve months which followed (1887–8) the corresponding figures were, for refined sugar, 6 cents nine times and 7 cents three times; for raw sugar, 4 cents six times and 5 cents six times. For the next period of twelve months (1888–9) the prices for refined sugar were 7 cents six times, 8 cents five times, and 9 cents once; those of raw sugar were 4 cents once, 5 cents six times, 6 cents four times, and 7 cents once. In the two years which succeeded a decline took place marked by many violent fluctuations.

Commenting upon an elaborate table and diagram,

the output (and therefore a monopoly) was impossible. But the Court took a common-sense view of the matter, holding that though a monopoly in the strict, technical, and absolute sense cannot thus be created, yet "a monopoly in the legal sense can." Any combination, continued the Court, "which has a tendency to prevent competition in its broad and general sense and thus at will to enhance prices to the detriment of the public is a legal [and therefore an illegal] monopoly."

[1] See his valuable article on "Trusts in the United States," *Economic Journal*, 1892, and his book, *The Trust Problem* (1900).

from which these figures are extracted, Professor Jenks maintains that the extra profit exacted by monopoly for nearly two years must have been more than 1 cent per pound, and adds: "The figures and diagrams clearly show that the Sugar Trust for some months—by virtue of the Trust organisation—took millions of dollars of what may be fairly called unearned profits from consumers." Other sets of figures put the profits of the Sugar Trusts very much higher.

The chief argument in favour of pools, Trusts, and other voluntary combinations for producing artificial monopolies is the economies which they are able to effect. But the amount of extra profit which may be earned in this way cannot be traced. That economy in advertisements, economy in organisation, is *possible* does not admit of doubt. Economy is always possible; but it can be effected by the splitting up of a large concern as well as by the amalgamation of small ones. The salient feature of a successful combination in America is always a substantial rise of price in the article produced, or, what comes to the same thing, a retardation or arrest of its natural fall. The American public is often reminded of the benefits conferred by the Oil Trust; but if its operations are submitted to the suggested test, public gratitude would appear to be superfluous. In the years 1861–72 (before the formation of the Trust) the net average annual percentage of decrease

in the price of refined oil was 10·4. Between 1873 and 1881 it was 7·3. Between 1882 and 1887 it was 2·2. During the second or formative period the Trust was still weak. In the third period it was in its full vigour.

The Envelope Trust deserves honourable mention for its extreme ingenuity. It paid one manufacturer of a patented machine a fixed sum to manufacture exclusively for the Envelope Trust. In this way a private artificial monopoly based upon a voluntary contract in restraint of trade distanced, or rather evaded, all competition except in the one item of stamped envelopes. There the government of the United States was protected against competition by another artificial monopoly based upon statute!

Let us turn our attention to some of the startling mushroom growths of the last few years. It has been found by the great financial houses which live largely on flotation that giant combinations, especially during financial booms, are very attractive to investors; and enormous sums have been poured into vast top-heavy concerns like the Shipping Trust that were plainly destined to end in disaster.

The eminent economist and statistician, Mr. Schloss, in the important Memorandum which he prepared last year for the Board of Trade,[1] defines a Trust for

[1] Memorandum on the Export Policy of Trusts in Certain Foreign Countries, C.d., 1761 (1903), pp. 296 to 359. I have drawn freely upon this valuable accumulation of facts.

the purpose of his inquiry as any organisation pursuing a common business policy on a scale sufficiently large to control wholly or partially the course of trade (perhaps we had better say of domestic prices) in the classes of goods produced or distributed. Now to the student who pursues his avocation without paying much attention to the hidden motives of political journalism it may seem surprising that in the United States there should be an outcry against the Trusts because they sell dear, while in England there is an outcry against those same Trusts because they sell cheap. But the explanation is simple. In America it is the wail of the consumer whose prices are raised by monopoly; in England it is the wail of the producer whose prices are lowered by competition. It should also be remembered, to guard ourselves against exaggerations, that only a small fraction of the exports of the United States are manufactured and partly manufactured goods. The great bulk still consists of agricultural produce. And of this fraction only a small fraction is "dumped." This much is certain. Let me quote the words of Mr. Schloss:—

"The available evidence goes to show that for some time past the United States has for the most part been able to absorb, and has, in fact, kept at home, a great proportion of its total output [of manufactured goods], and that during this period of exceptionally good trade in the American home market, the inducement on the part of the Trust Organisation of the

United States to dump surplus goods at low prices in foreign markets may fairly be considered to have been slight, as compared with what might be manifested in time of industrial depression in the States."

However, so bitter was the popular feeling against the Trusts, that an Industrial Commission was appointed, which reported at immense length in the year 1900. The thirteenth volume of the Report contains an exhaustive inquiry into the truth or falsehood of "the frequent assertion that exporters of American made goods often sell them in foreign countries at lower prices than are obtained for similar goods at home."

But unfortunately it is not easy to estimate the value of the information given by the officers of these various corporations. Well aware, as Mr. Schloss observes, of the suspicion, if not positive aversion, with which Trusts are regarded by popular opinion in the United States, they were unlikely to make admissions which would justify the popular complaint, that Trusts favour the foreign purchaser at the expense of the American consumer "and would furnish powerful assistance to those enemies of the Trusts who would like to see the destruction of the tariff war, behind the shelter of which these combinations carry on their operations."[1] The majority of the firms declared that their selling prices

[1] Memorandum, p. 316.

were the same at home as abroad, a few claimed to get higher prices at home than abroad, while a considerable number admitted that they sold regularly or occasionally at lower prices abroad than at home. One firm, for example (No. 16), which manufactured about 60 per cent. of the American output of iron pipe and exported over 2½ million dollars worth to other countries, declared that their prices were regulated by market conditions, and that foreign markets had been cultivated not merely for profit in the ordinary sense, but "that our tonnage might thereby be increased, with the resultant reduction in cost." Here we have in a nutshell put what may be called the scientific theory of "dumping." Another firm, (No. 21), which produced from 50 to 75 per cent. of all the boring machines, etc., produced in the United States, admitted that they sold abroad 5 per cent. cheaper than at home. Firm No. 151 produced about 80 per cent. of all the anvils made in the United States. Its exports were 5 per cent. of the total output, but were only worth 10,000 dollars annually. The anvils exported were sold principally in South Africa, Australia, and Canada, practically at cost price "to meet foreign competitors."

Some light is thrown upon Trust methods by the prospectus of an enormous combination formed in 1902 by the five largest American makers of harvest machinery. The combination had a capital of £24,000,000.

"It is expected that altogether, notwithstanding the rise in price of raw material this year, machines will be marketable at a reduction of more than 10 per cent. on the present price, as it is stated it costs more to sell a machine under the present method than it does to manufacture it, and as it is stated that there will be no competition in the United States to require a reduction in prices to obtain sales the companies could stand a further reduction in the export trade."[1]

We have noticed elsewhere the close connection in many cases between railways and manufacturing monopolies. Several of the firms that gave evidence before the Commission referred to the subject. One witness quoted a letter from a petroleum firm to the following effect :—

"We are very large manufacturers of oil and oil products, and feel the discrimination in rates over the railroads very severely indeed, so much so that we are obliged to market 70 per cent. of our products in Europe."

The same witness mentioned that, according to the railway rates current in August, 1899, the export rate on shipments of grain was 11 cents per 100 pounds, while the domestic rate was 17 cents, or 50 per cent. higher. The Industrial Commission, in reporting on the question of freight discrimination, found "it has been quite generally conceded by railroad men and shippers, that even up to the present time discrimina-

[1] See Board of Trade Journal, September 18th, 1902, p. 549.

ting rates are made in favour of large shippers." In an address given early in 1902, Mr. Prouty, a member of the Inter-state Commission, is reported to have said: "Five men now actually control the railways of the United States. There is no longer any real competition. The only remedy is government control of rates. We are face to face with railroad monopoly." It will be instructive now to consider in some little detail three of the biggest American Trusts.

First comes the Standard Oil Company, which owes its prosperity not to a tariff, but to the fact that it deals in a natural monopoly. Second is the United States Steel Corporation, which, although sheltered by a very high tariff, has already done something to prove and illustrate the dangers and unwieldiness of gigantic combinations. Third comes the equally gigantic Shipping Trust, Mr. Morgan's ambitious attempt to monopolise the carrying trade of the Atlantic—an attempt which was supposed at the time by the London press to have struck a fatal blow at the commercial supremacy of the British Mercantile Marine. The Trust, however, was doomed to disaster from the first, as every disinterested and competent critic could see for himself by reading its programme. The fleets which it purchased were bought at exorbitant rates, the firms which remained outside the combine were quite strong enough to prevent it from controlling either goods freights or passenger rates, and it was quite impossible that

the Trust would ever be able to pay the investors a reasonable return on their capital. We now proceed to consider the three combinations in their order.

1. When the Standard Oil Trust was first established it was a Trust in the technical or legal sense; that is to say, it was a business owned by trustees for the benefit of other people. Its enormous success helps to account for the popularity of the name and organisation with American investors until their eyes were opened by the disasters of 1903.[1] But the success of the Oil Trust can easily be explained, being dependent on causes that cannot be counted upon by Trusts operating in ordinary branches of industry. Its success is exactly parallel to that of the Anthracite Coal Combination in Pennsylvania. The best anthracite coal mines are all found together in one part of Pennsylvania; and with the assistance of the railway the coal producers have been able to fix prices fairly effectually. The sources of crude oil, as Professor Ely has observed, are spread over a wider area; but the chief sources of supply are in Pennsylvania and Ohio. At first the monopoly was confined to the business of refining oil; but now, thanks to the co-operation of railways, "it looks as if we should reach a monopoly not merely in the refining of oil, but in

[1] In the first half of that year no less than forty-four Trusts were placed in the hands of receivers.

the production of oil itself, because the production is limited geographically."[1]

The Standard Oil Company dates from 1872, the year in which the Anthracite Coal Combination was formed. Various efforts were made to resist the progress of the Standard Oil Trust; but they were all ineffectual, chiefly owing to the close understanding or alliance that subsisted between the company and the local railway companies. In one case which came into the courts it was proved that an Ohio railway company charged an independent trader, Mr. George Rice, of Marietta, a rate of 35 cents, while it charged the Standard Oil Company a rate of 10 cents for carrying oil the same distance and under the same circumstances. To avoid the railway difficulty the independent refiners in 1878–9 began the construction of pipes to convey the oil to distributing centres. Thereupon the railroad gradually reduced their rates from 115 to 10 cents a barrel! The war lasted till 1883, when the Tide Water Pipe Line Company, the last surviving competitor, was finally gobbled up by the Trust. The whole history of this giant combination points to the conclusion that had there been an independent and impartial administration of the Pennsylvanian and Ohio railways, no oil monopoly could ever have been developed. The conspirators seem to have stuck at nothing. A partisan

[1] See Ely, *Monopolies and Trusts*, p. 57.

of the Trust once said to M. de Rousiers, a French investigator: "The Pennsylvania railroad could not refuse the cars of a competitor of the Standard Oil Company, but nothing could hinder it from side-tracking them."[1]

The report of the Industrial Commission (1900–1), however, supports the company's statement that its export trade has not been built up at the expense of its domestic trade. The prices of oil have been as a rule much the same in all parts of the world, owing to the competition of the Russian and Austrian fields, which have not been acquired by the Standard Oil Company. During the last year or two a rate war has raged between the American Trust and an Austrian combination; but an agreement was signed which may raise prices all over the world.

2. The formation of the United States Steel Corporation in March was certainly the most tremendous industrial event of the year 1901. Previous to the amalgamation there existed in the United States eight important iron and steel corporations with a share and bond capital not far short of 700,000,000 dollars. The largest by far was, of course, the Carnegie Company, which had then issued ordinary shares to the value of 156, and bonds to the value of 160, million dollars.

[1] See M. de Rousiers' *Les Industries monopolisées aux Etats-Unis.* A full and biting history of the Standard Oil Company has been written by Miss Ida M. Tarbell, a gentle appreciation by Mr. G. H. Montague.

According to the calculation which appeared in the New York *Journal of Commerce*, January 3rd, 1903, there were only twenty-four companies independent of the United States Steel Corporation, and the capital which they represented was only a quarter of the total capital of this immense Corporation.[1] Mr. Byron Holt, who has written in much detail on the subject, states that the Steel Corporation has an annual production valued at 400,000,000 dollars, and pays salaries and wages amounting to 150,000,000 dollars. But the most interesting fact which his investigations have brought to light is the connection between the Corporation and the tariff. According to his calculations the actual benefit which accrues to the Trust from the tariff in respect of its sales in the United States amounts to no less than 72,000,000 dollars a year, over £14,000,000 sterling. In spite of the tall talk indulged in at various times by managers of the Steel Corporation and its predecessors, we must insist upon two undoubted facts in connection with the American steel industry and its monster organisation.

(*a*) Although America has immense natural advantages in its magnificent coal and iron fields, yet the industry on its present basis is dependent upon the tariff; and American consumers and taxpayers

[1] The capital of the United States Steel Corporation was estimated at over 1½ billion dollars, and it comprised 669 distinct working concerns.

practically pay a tribute of £14,000,000 dollars a year for the privilege of buying their goods exclusively from American firms.

(*b*) Even with the advantages of the tariff the monster organisation, judged by the price of its shares, found itself after three years' working in a depressed and even perilous financial condition. The ordinary stock of the Steel Corporation was quoted on August 1st, 1901 (four months after its flotation), at 43; on August 1st, 1902, at 40; on August 1st, 1903, at 24; and finally, on August 1st, 1904, at 12. Since then there has been a recovery. Now let us look more closely at the commercial and social policy of this Trust and compare its promises with its performances. Here are one or two gems from the evidence given before the Industrial Commission. Mr. Guthrie, of the Steel Hoop Company (now absorbed in the Steel Corporation), was asked: "In ordinary times you can keep up American wages and beat the Englishman in his own market?" *Answer:* "Without the slightest doubt; we can whip him and make money."

Mr. Guthrie explained in another place that "the Carnegie Steel Company were practically the pioneers in exporting steel." They started on a large scale in 1893; they proposed to sell abroad for 20 per cent. less than at home, "lower than their cost price; and it was done to keep things moving and bring gold back."

Even in 1899, however, the export policy had not led to much profitable trade. Taking the cost of carriage into account, said Mr. Gary, the President of another company, it would not pay to export. But the scientific theory of the steel magnates always was that though it was not necessary to export in prosperous times, they would do a great service to the State at times of depression by keeping their workmen in employment. As to this we may refer to the evidence of Mr. Schwab, given in May, 1901, shortly after he became President of the United States Steel Corporation.

"It is quite true that export prices are made at a very much lower rate than those here; but there is no one who has been a manufacturer for any length of time who will not tell you that the reason he sold, even at a loss, was to run his works full and steady. . . . When we have as much as we can do at home as we have to-day, people are not anxious to sell materials at low prices. But when our mills are not running steady and full we will take orders at low prices, even if there is some loss in so doing, in order to keep running."

It is noteworthy that Mr. Schwab expressly stated that when business is in a normal condition the prices at which the Steel Corporation sells to foreigners are always lower than those at which it sells to home consumers. For instance, a foreign

railway company could buy its rails at 23 dollars a ton, whereas an American railway company had to pay, according to Mr. Schwab, from 26 to 28 dollars a ton. Now let us see whether the tribute which the Corporation exacts from American consumers by aid of the tariff in prosperous times is requited in the shape of the steady work it gives to its employees in times of depression.

In the autumn of 1903 a Director of the Steel Trust told a representative of the *Philadelphia Ledger* that trade was falling off, and anticipated that before long the American demand would be several million tons short of the American supply. "What are you going to do?" asked the reporter. "Oh," replied the Director, "we have made all our preparations; we are not going to reduce our output. No, if we did that it would be injurious to America. We should have to turn out of our works into the streets hundreds of thousands of American workmen, and therefore what we are going to do is to invade foreign markets."[1] The depression foreseen by the Director came in the spring of 1904. On June 24th the Pittsburg correspondent of the *Iron and Coal Trades Review* (June 24th) wrote to say that for the next two or three months, and perhaps for many months, there was nothing for the iron and steel trade but "a continuance of the decrease in production." Already the

[1] Cp. Mr. Chamberlain's speech at Greenock, October, 1903, where the interview is quoted and an argument is founded upon it.

Steel Corporation had eight furnaces idle in Allegheny County, seven in the Valleys, three at Mingo Junction, and three in the Chicago district, "making a total of twenty-one furnaces at least now idle out of a total of eighty-six according to its last report." Its steel-works had also been closing rapidly. "In the past fortnight the Corporation has shut down four bessemer steel plants, having an annual capacity of 1,700,000 tons of ingots, or 27 per cent. of its actual production last year." In the beginning of July the *New York World* instituted inquiries as to the state of employment, and came to the conclusion that on the 24th of June there were 655,000 wage-earners idle in the United States who were made up as follows:—

Iron and steel workers . . .	140,000
Railway employees . . .	120,000
New England mill operatives . .	80,000
Packing-house employees . .	75,000
Coal miners . . .	60,000
In other trades . . .	180,00

About the same time a Pittsburg correspondent estimated that 70 per cent. of the furnaces in that district were idle; and the *Glasgow Herald's* New York correspondent telegraphed that the restrictive movement was proceeding rapidly: "Very general shutting down has been resorted to by the larger iron and steel mills. The iron, steel, and tin workers

have agreed to accept a reduction of 18 per cent. in the coming year." According to the monthly statistics of the *Iron Age*, the week's output of pig-iron had fallen from 368,000 tons at the end of April to 336,000 at the end of May, and again to 272,000 at the end of June. The locomotive industry was equally distressed. During June the Baldwin Locomotive Works in Philadelphia had already discharged 6,000 men, and had given notice to 4,000 more—more than half the total number of their employees.

This brief recital proves conclusively that the scientific export theory of Trusts in a protective country does not work in practice. In spite of all their promises and assurances, the directors of the Steel Corporation did exactly what employers always do in time of depression, and did it with relentless rigour on an extraordinary scale. They closed mills, blew out furnaces, reduced wages, and discharged their work-people.

3. The Atlantic Shipping Trust. This monster Trust, which caused such panic in the patriot press of Great Britain in the autumn of 1902, was incorporated "under a hospitable New Jersey Charter," and officially registered on the 1st of October, 1902, in the State of New Jersey, with the official name of the International Mercantile Marine Company. Its share capital consisted of 120,000,000 dollars, half in ordinary shares, half in preference shares, bearing 6 per cent. interest. Debentures were also issued to

the extent of 50,000,000 dollars. The Trust was administered by a board of eight Americans and five Englishmen, presided over by Mr. Griscom. The London Committee was presided over by Sir E. C. Dawkins, Mr. Pierpont Morgan's financial administrator in London. The success of the Trust was predicted on the following grounds: (1) that it would be fed by certain railways under Mr. Morgan's control to the exclusion of competing shipping lines, (2) that in any case it would be strong enough to control rates and freights between the United States and Europe, (3) that great economies would be effected by the concentration of managements.

Altogether five lines were combined in the Trust, which thus obtained a fleet of one hundred and eighteen large steamships, aggregating 881,000 tons. An arrangement was also concluded with the firm of Harland and Wolff, of Belfast, who engaged to execute all orders for ships given them by the Trust, and not to build for rival companies, except by arrangement with the Trust. As regards the financial arrangements, the fortunate shareholders of the Leyland Line received cash, while the shareholders of the other four lines received theirs partly in cash, partly in Shipping Trust shares. A treaty was also entered into with two great German companies—the North German Lloyd and the Hamburg American Line—in order to prevent a rate-cutting competition. But how far Mr. Morgan and his friends were from

establishing anything in the nature of a monopoly may be inferred from the fact that nine important British lines remained outside the Trust. So ridiculous was the talk of the time about the "Morganisation of the Ocean!" Equally ridiculous were the fears expressed in the English press that the formation of the Trust meant the transference of mercantile supremacy from Great Britain to America. It is quite true that a large number of old English ships were sold to a company predominantly American for far more than they were worth, but gradually English influence prevailed, and now the Monster Combine, shorn of its prestige and financial credit, is under British control, Mr. Griscom having yielded his position to Mr. Ismay.

The failure of this American attempt to control the world's shipping is emphasised by the collapse of the United States Shipbuilding Trust, which went into the Receiver's hands in 1903.[1]

Still more recently another gigantic enterprise has come even more ignominiously to grief. In the summer of 1904 the newspapers announced that a much-boomed combination of cotton mills in the Southern States of America had ended in bankruptcy. "The Southern Textile Company" was incorporated in New Jersey in February, 1903, with an authorised capital of 20,000,000 dollars, or over

[1] The Receiver's Report is reprinted in Professor Ripley's valuable compilation, *Trusts, Pools, and Corporations* (1905).

£4,000,000 sterling. There were to be 7,000,000 dollars of 7 per cent. preferred stock, a like amount of common stock, and 6,000,000 dollars of first mortgage gold bonds bearing interest at 6 per cent. The promoters proposed to take over sixty concerns throughout the South, but only succeeded in acquiring four. They also expected, or said they expected, by establishing a central selling office in New York for the products of all the mills, to do away with the services of the commission merchants and save their charges. The business was placed in the hands of a receiver, who reported that all the four mills of the company were closed, and that with the exception of the Windsor Mills none of them could be run at a profit. Of the company's authorised capital there had actually been issued 598,500 dollars of preferred stock, 172,000 dollars of common stock, and 179,200 dollars of bonds.

Perhaps it may be inferred from this that the investing public in America will begin to be sceptical about the commercial successes to be derived from the amalgamation of capital.

So far as contracts in restraint of trade are concerned, the American courts appear to have adopted a line very similar to the English. Thus they have held that a contract giving a telegraph company an exclusive right to erect poles along a railroad is void, because "telegraphs are now essential to business, and as such are to be kept open to competition,

unless the legislature should otherwise determine, in the same way that common carriage is to be kept open to competition."[1]

But if we allow for the fact that, in the absence of anything approaching a skilled civil service, either federal, State, or municipal, the American courts are virtually entrusted with the duty of regulating countless monopolies, natural and artificial, it cannot be said that American judges have proved at all adequate to the task, which, indeed, is one that should never have been set them. Until quite recently the American courts and the legislature seemed to be progressing in opposite directions. There, as in England, but with less excuse, the old doctrines that governed contract in restraint of trade have been relaxed or altogether renounced.[2]

[1] See quotation in *Mercantile Trust Co.* v. *Atlantic*, etc., *Ry. Co.*, 11 Fed. Rep., 1.

[2] The approval with which a well-known text-writer notices a recent case favourable to the creation of monopolies by covenant is a striking sign of the reactionary tendencies of legal opinion in America. "The most liberal and advanced [!] doctrine on the subject in this country is found in the case of the *Diamond Match Co.* v. *Roeber* (106 N.Y. 473; 13 N.E. Rep. 419), in which the history of the law is elaborately considered, and a covenant excluding a manufacturer of matches, who had sold his property, stock, etc., from engaging in the manufacture and sale of matches for a period of ninety-nine years, within any of the states and territories, except Nevada and Montana, was sustained." See *Modern Law of Contracts*, by Charles Fisk Beach, vol. ii. p. 2,026, note. The learned author explains what he regards as a welcome relaxation by "the great diffusion of wealth, the wonderful advance made in the method and facilities of manufacturing and carrying on commerce, the manifold improvements in machinery," etc., which have enlarged old and opened new fields of industry.

Whether the restraint be general or partial no longer matters. The courts will not interfere because of the numerical strength of a combination, or of the size of the space covered by its operations. But if a natural tendency to injure public interests can be proved, a contract will be held void. Differences in circumstances are very properly taken into consideration. Thus a combination to raise the price of bread, it has been argued, would be comparatively harmless in an agricultural State; but a combination of the same character might have disastrous results in a densely populated district. The American courts have been influenced, perhaps misled, by the doctrines of certain publicists and economists, who, having discovered that in a few theoretical cases monopoly does not necessarily enhance the price of an article, have elevated their exceptions into a rule, and proclaimed their rule as if it were the gospel, not of company-promotion, but of public policy. In a Sugar Trust case the Supreme Court of New York thought fit to observe that "excessive competition may sometimes result in actual injury to the public";[1] and the Supreme Court of Minnesota has arranged the same proposition in a more elaborate form.

"Modern investigations have much modified the views of Courts, as well as of political economists, as to the effect of contracts intended to reduce the

[1] *People* v. *North River Sugar Refining Co.*, 54 Hun. 354.

number of competitors in any particular line of business. Excessive[1] competition is not now accepted as necessarily conducive to the public good. The fact is that the early Common Law doctrine in regard to contracts in Restraint of Trade largely grew out of a state of society and of business which has ceased to exist, and hence the doctrine has been much modified."[2]

The tendency of the American courts to let monopolies alone ran in accordance with popular opinion until the eighties, when public attention, as we have seen, had been drawn to the mushroom growth of "Trusts" or "Combines," which seemed to aim at exploiting the public and enriching their members by the creation of huge monopolies. Corrupt politicians in every assembly from Congress to the Municipal Chamber were disposing of valuable public franchises. Political "bosses" joined financial "rings"; and company promoters of all descriptions began to offer their services on public bodies. Never had public service realised private fortunes on a more princely scale. It is not surprising that the question of monopoly soon became an important political issue. Popularity-seeking lawyers looked into the matter and found that the old English statutes and

[1] The epithet "excessive," of course, begs the whole question.
[2] *National Benefit Co.* v. *Union Hospital Co.*, 45 Minn. 272.

reports denounced and prohibited monopolies. Thereupon, in the words of Mr. Fisk,

"Statutes were hastily draughted, and more hastily crowded through the legislatures of twenty or more states, under all sorts of partisan pressure, with the practical result of declaring every conceivable sort of association, agreement, or partnership which could by any stretch of the imagination be regarded as in any possible way in restraint of the most unrestricted competition unlawful and frequently punishable as a felony."

It all amounted substantially to "a solemn iteration in our statute books in the United States at the end of the nineteenth century of the common law of England of the sixteenth, seventeenth, and eighteenth centuries."

Mr. Fisk does not stop to inquire whether the legal similarity is not justified by the economic analogy. Yet surely old social conditions, like fashions of dress, however bad and inconvenient, tend to recur. Guilds—and crinolines—are always liable to return. To assume that monopolies cannot exist at the end of the nineteenth century because they existed at the beginning of the eighteenth is to fall into a fallacy quite as glaring as that into which the Fabian essayists slipped when they proclaimed that the capitalistic system having flourished in the nineteenth century was destined by all laws, human and divine, to disappear in the twentieth.

There is one important feature of the Trust system in America of which it is difficult for an outsider to write. I mean its tendency to corrupt public life. Mr. Franklin Pierce, in a trenchant letter to the *Times* (August 28th, 1903), thus described it:—

"The railway directors and the manufacturers are united in a combination to control the action of our great newspapers, to purchase favourable legislation, and to debauch the people. Special legislation is sold to a greater or less extent by every legislature. The moral sense of our whole people is being dulled and deadened by the nefarious system of protective tariffs and special legislation. . . . A large lobby infests our legislature and national Congress, and the free discussion of their evils is shut off in our newspapers through the use of money furnished by the combinations of bankers, manufacturers, and railway magnates."

Mr. Pierce went on to speak of the sufferings entailed on the Western farmer in language that reminds us of the famous passage in which Sydney Smith portrayed the taxes that oppressed Englishmen in the early part of last century.

"Every nail which he (the Western farmer) has driven in, every hundred feet of barbed wire fence which he has used, every thread of his clothing has been taxed, and the great industrial combinations have sat at his fireside, sipped in his cup, lived by his side, and robbed him steadily."

It has been pointed out in a previous chapter that the extent of the Trust domination is usually exaggerated. Upon this it may be well to give an official estimate. According to the census of 1900, out of the total value of goods manufactured in the United States only 14 per cent. were Trust products.

But if some American writers could be trusted, it would be difficult to over-estimate the number and strength of these combinations. In *Monopolies and the People*, written in 1889, Mr. C. W. Baker states that the following articles were, in that year, more or less completely in the hands of Trusts and combinations in the United States :—

"Petroleum, cotton-seed oil and cake, sugar, oatmeal, pearl barley, coal, straw-board, castor-oil, linseed oil, lard, school slates, oilcloth, gas, whisky, rubber, steel rails, steel and iron beams, nails, wrought-iron pipes, iron nuts, stoves, lead, copper, envelopes, paper bags, paving-pitch, cordage, coke, reaping and binding and mowing machines, threshing machines, ploughs, whitelead, glass, jute-bagging, lumber, shingles, friction matches, beef, felt, lead pencils, cartridges, watches, carpets, coffers, dental instruments, lager-beer, wall-paper, sandstone, marble, milk, salt, patent leather, flour and bread."

If this list be even approximately correct (and many others like it, and even larger, have been pro-

mulgated since), few will be disposed to quarrel with the American judge who so far digressed from condemnation of a particular "combine" as to express a doubt "if free government can long exist in a country where such enormous amounts of money are accumulated in the vaults of corporations, to be used at discretion in controlling the property and business of the country."

Professor Jenks appears to lay a very exaggerated stress upon the economic advantage of these huge combinations. The achievements of the "greater Trusts," such as the Standard Oil, the Cotton Oil, the Cotton Bagging, and the Sugar Trust, extort the reluctant admission that "in most instances output was restricted and price raised," but this fact scarcely detracts in his eyes from the splendour of the supposed saving in labour and capital. The crowning glory is, or was,[1] the Whisky Trust. More than eighty distilleries joined it. Formerly it had only been organised as a pool, and then each of the eighty tributaries "ran at part capacity, one year at 40 per cent., one year at only 28 per cent." But when the pool was transformed into a Trust, "only twelve were running; but these were producing at about their full capacity; and the total output of alcohol was not at all lessened." The manufacture of alcohol, like the manufacture of explosives or poison or opium, is a trade in which, quite apart from eco-

[1] It was under the control of receivers from 1894 to 1896.

nomics, the moral argument for strict regimental control or absolute management by the central authority is almost overwhelming. But putting aside this aspect and assuming whisky to be like cotton, an article necessary to the comfort and prosperity of the nation, Political Economy, or rather Political Psychology, can yet dispute Professor Jenks's insinuation that the rule of a scattered group of factories by a Board of Experts sitting round a telephone will in the long run, in a normal Free Trade community, prove more efficient than the older system in which every factory has its captain on the spot. The magic of ownership, which has so often made a newspaper owner of moderate intelligence a far better editor than the brilliant man who has no capital interest in the concern, may very well outweigh the advantages claimed for the Board of Experts. Besides, who is to guarantee that the best men will be on the Board? It is not suggested that representative machinery, even in America, is so perfect that candidates are nominated and elected by capacity. "Expert management," "government by experts," are phrases that run very easily from the pen, but mean very little in actual life.

Mr. W. R. Lawson, in his *American Industrial Problems*, gives the following extract from what he calls the United States Tariff for Trusts, 1902 :—

1. FOR IRON AND STEEL KINGS

Iron, manufacture of	45 per cent. *ad valorem.*
Steel	45 „ „
Bronze	45 „ „
Copper	45 „ „
Tinned plates	1½ cents per lb.
Hoops, iron or steel	5·10 „ „
Iron screws	12 „ „
Cut-nails	6·10 „ „
Horseshoe nails	2¼ „ „
Lead pigs in bars	2½ „ „

2. FOR THE COAL RING

Soft coal	67 cents per ton.
Anthracite	free.

3. FOR THE BEEF BARONS

Beef	2 cents per lb.
Cattle	27½ per cent. *ad valorem.*
Hams and Bacon	5 cents per lb.
Lard	2 cents per lb.

4. FOR THE SUGAR LORDS

Sugar under 16° Dutch standard	$\frac{95}{100}$ cent per lb.
Sugar over 16°	$1\frac{95}{100}$ „ „
Molasses 40° to 56°	3 cents per gal.
„ over 56°	6 cents „

5. FOR THE TOBACCO TRUST

Tobacco, unmanufactured	35 cents per lb.
„ stemmed	50 „ „
Cigar-wrappers	1·85 dols. „
„ stemmed	2·50 „ „

These items will suffice to illustrate Mr. Havermeyer's candid avowal that the tariff is the mother of Trusts. The only exceptions seem to be the Standard Oil Company, which grew up in the way previously described without tariff, and two smaller concerns, the American Chicle Company and the Royal Baking Powder Company. Whether these two companies are able to command monopoly prices, and if so, why, I am not able to state.[1]

[1] This chapter was written before the appearance of the series of articles on American Trusts collected and edited by Professor Ripley, and entitled *Trusts, Pools, and Corporations*. It contains a learned "Survey and Criticism" of Trust literature by Mr. C. J. Bullock.

CHAPTER III

ENGLISH TRUSTS AND COMBINATIONS

ARE trade combinations more common in Great Britain than they ever were before, are they more successful, and are they able to create monopolies, and so to raise prices against consumers? The answer to the first question seems to be that formal or explicit combinations have been far more common owing to the working of the Companies Acts and the popularity of large limited liability companies with investors. A successful manufacturer who wants to retire from business finds it very convenient to sell his concern to a limited liability company, and in order to make the flotation larger and more attractive, the concerns of several other, usually less successful, rivals are often added. When there is plenty of money seeking investment, an amalgamation of this kind is often triumphantly floated. But experience, as we shall see, has not proved that amalgamations are more successful than the individual firms out of which they came. Those who watch the formations of combines often neglect

to watch their dissolutions. Hence most writers exaggerate the progress of a principle which they believe to be encroaching upon competition. It is as if a student of population were to read all the birth columns and forget to deduct deaths.

As to the second question, there is no reason to suppose that the advantage of large over small concerns is any greater than it was fifty or a hundred years ago. There is probably more competition, because there is more competing capital and labour than ever before in the history of the world. The third question also must be answered in the negative. The fall of prices during the last thirty years has been continuous and almost universal in Free Trade countries, where things have their natural or international price.

Two of the earliest attempts to secure monopoly prices by trade combination in Great Britain were made by the Salt Union, formed in 1888 out of sixty-four firms, with a capital of £4,000,000, and by the United Alkali Company, formed in 1891, with a capital of £8,500,000. The former combination raised prices considerably for a few months, but the export trade fell off rapidly, and the position of the Union grew steadily worse, until in 1899 the £10 ordinary shares had fallen to 1⅝. The history of the United Alkali Company has been told by Mr. Macrosty. It comprised originally forty-five chemical and three salt works, and afterwards bought

up three other competing firms. It also controlled the output of five other firms, and had agreements with several more. It controlled the Leblanc process for manufacturing bleaching-powder, caustic soda, etc., and claimed to produce 83 per cent. of the total output of four leading chemicals. Considerable economies were also promised in management and distribution.

"Everything seemed to promise success; but foreign competition and the utilisation of rival processes proved too much for a company weighted with so much over-capitalisation. Its £10 ordinary shares have fallen to $2\frac{3}{4}$." [1]

Neither the Salt Union nor the United Alkali Company paid any dividends on ordinary shares between the years 1898 and 1902.

The firm of J. and P. Coats, manufacturers of sewing-cotton, was founded in 1830, and extended to America in 1842. In 1884 it became a private family company. In 1890 it was converted into a public company with a capital of $5\frac{3}{4}$ millions sterling. The average profits of the previous seven years had been £426,000, so that no one can suggest that Messrs. Coats owe their prosperity to the principle of combination. In 1895–6 they absorbed four of their competitors (Kerr, Clarke, Chadwick, and

[1] *Trusts and the State*, by H. W. Macrosty. London, 1901; p. 161.

Brook), all healthy and profitable concerns. For this purpose another £4,000,000 was added to the capital. But so extraordinarily sound and flourishing was the business in all its branches that the £10 ordinary shares were actually issued at £50. In 1901 they stood at £75, and in 1904 they stood at over £90. After this amalgamation the Coats concern possessed sixteen mills, including factories in Russia and the United States and Canada, sixty branch houses, and 150 depôts.

They employed, however, only 5,000 hands. Since then further amalgamations have taken place, but the Company cannot claim to have secured a monopoly or to control prices, as there are said to be some forty independent firms on the Continent. That number may be exaggerated, and the effectiveness of their competition in the English market may be diminished by secret agreements for partition of territory. However that may be—and the Company is not very lavish in imparting information as to its commercial diplomacy!—the analysis issued in 1903, in setting forth seven years' profits, showed conclusively that the prosperity of the undertaking was still advancing by leaps and bounds (see table on the next page).

The West Riding of Yorkshire has been productive ground for combinations since the year 1898, especially in the cloth manufacturing district of which Bradford is the centre. Bradford is the great focus

J. AND P. COATS—1903

AN ANALYSIS OF THE PAST SEVEN YEARS' RESULTS

Year Ended 30th June	1903	1902	1901	1900	1899	1898	1897
	£	£	£	£	£	£	£
Trading profit, interest, &c.	2,774,601	2,698,177	2,715,156	2,518,497	1,897,286	1,446,909	1,032,147
Depreciation	36,965	35,765	35,003	39,197	39,054	50,163	50,445
	2,737,636	2,662,412	2,680,153	2,479,300	1,858,232	1,396,746	981,692
Management salaries, &c.	53,104	63,158	67,114	49,513	43,470	39,518	39,484
Net profit	2,684,532	2,599,254	2,613,037	2,429,787	1,814,762	1,357,228	942,208
Brought forward	370,464	308,781	272,104	82,238	57,397	41,811	42,674
Total	3,054,996	2,908,035	2,885,143	2,512,025	1,872,159	1,399,039	984,882
Appropriation—							
Debenture interest	43,483	[2] 44,570	90,000	90,000	90,000	90,000	90,000
Pref. shares at 6 p.c.	150,000	150,000	149,922	149,920	149,921	149,945	149,654
£3,000,000 prefd. ord. shares at 20 p.c.	600,000	600,000	600,000	} 1,500,000	1,200,000	900,000	599,394
£4,500,000 ord. shares	900,000	900,000	[3] 900,000				
Total in interest and dividends	1,693,483	1,694,570	1,739,922	1,739,920	1,439,921	1,139,945	839,048
To reserve fund	750,000	[4] 840,000	606,440	350,000	350,000	200,000	100,000
,, Underwriting and suspense accounts	100,000	.....	140,000	150,000	.....	.....	.....
,, Redemption of debs. and income-tax	[5] 90,793	3,000	90,000	.....	.....	1,697	4,023
Carried forward	420,720	370,465	308,781	272,104	82,238	57,397	41,811
Total	3,054,996	2,908,035	2,885,143	2,512,024	1,872,159	1,399,039	984,882
Ordinary dividend	[1] 20 p.c.	[1] 20 p.c.	[1] 20 p.c.	50 p.c.	40 p.c.	30 p.c.	20 p.c.
Reserve fund	2,850,000	2,050,000	1,310,000	1,850,000	1,500,000	1,150,000	950,000

for the wool trade of the world, and many of the processes of preparing this material, of making it into cloth, and of placing the cloth on the market are exclusively localised within a few miles of the city. The population, also, has been trained up to the highest specialisation in the craftmanship of the trade —indeed, the very names of important branches, which employ hundreds of hands and large amounts of capital, would be unintelligible to an average man. The competition in all these trades had become very keen, especially in dull times, when orders were regularly taken at a loss in order to keep the expensive plants at work. As the trade is greatly influenced by fashions, and is, in most of its branches, more fluctuating than any in the kingdom, these periods of depression accompanied by cutting of prices seemed likely to recur until everyone would be ruined. A remedy was sought in combination, for which the localised state of the industries offered unusual facilities. Combination was in time applied to many branches of the cloth industry, using that term to cover all the many trades by which a fleece of wool is handled before it is cloth ready for the tailor. But the different combinations were independent of one another, and there was no suggestion of any connective idea between the different associations. The method of combination was the same in all cases— the freehold or leasehold of the different works in the branch of trade, with their plant, stock, and

goodwill, was bought out and out by the combination, and floated as one limited liability company. About one-third of the shares and debentures were taken by the vendors of businesses as part of their price, and the balance was offered to, and readily taken by, the public. The uniting firms usually had seats on the Directorate of the Association—which made all the boards too large—but there was a small executive board or body of managers.[1] The original intention was to leave a good deal of freedom to the individual works, the vendors of which usually remained in possession as "branch managers" of the Association; but it was soon found that central control must be strengthened, and the federal element was reduced.

The first attempt at combination, and one which, by its success, probably caused the others to be pushed on, was concerned with one of the last processes of cloth-making—that of dyeing the pieces. The Bradford Dyers' Association was planned with a creditable disregard of the prospectus tricks which have been noticeable in similar schemes, and its financial basis was reasonably sound, no promoters' profits or underwriters' commission being payable. But even these advantages might have been insufficient to ensure success, had there not been personal elements such as

[1] It must be noted that the public who subscribed nearly two-thirds of the money have no representatives on the boards of directors.

are usually supplied by individual firms rather than companies, especially combinations. The fact is, that this Association happened to secure two or three strong, capable managing directors, who thoroughly understood the working of the trade, and who had sufficient force of character to keep the general Board of Directors in a subordination, which was probably the better for being partially unconscious. Having given due prominence to individuality, we may now turn to the constitution of this Association. It consisted of twenty-two firms, all carrying on business near to Bradford, and possessed of 90 per cent. of the piece-dyeing trade of the district. The value of the goods dyed by the associated firms amounted to over twelve millions sterling per annum; the different works employed 7,500 men, and used 250,000 tons of coal per annum. The dyers do not trade in the goods dyed, they work on commission, on cash terms, for the manufacturers; they have a lien on all goods in their hands; hence there is the minimum of risk from fluctuating markets or bad debts.

The objects of the combination were:—

(*a*) To avoid loss through cutting of prices, and to readjust rates to a reasonable level without inaugurating an era of inflated prices.

(*b*) To promote economies and improvements in production by combined practical knowledge.

(*c*) To economise by the centralisation of office work, buying materials, distribution, and finance.

It was at first intended that the control of each firm should remain in the old hands; but experience soon led the directors to close several works which were not doing well, and otherwise to consolidate the business under the control of the managing directors. The capital of this concern was raised by a million pounds each of 4 per cent. debenture stock, 5 per cent. preference shares, and ordinary shares, one-third of each being taken by vendors. The freehold properties and plant taken over were worth £1,943,000, and stocks-in-trade, guaranteed book-debts, and cash in hand brought up the purchased assets to £2,189,000. To this was added £681,000 for goodwill, and a balance of £130,000 was provided for fresh working capital in addition to the cash balances taken over. The goodwill, it should be observed, was slightly more than three years' purchase on the certified gross profits and four years' purchase on the net profits, after allowing for management, salaries, and depreciation. This payment for goodwill could only be justified if a virtual monopoly were obtained, and this the Association claimed on account of local circumstances.[1] This Association has been satis-

[1] It may be added that the amount of preference and ordinary shares required to be taken by vendors (£666,666) almost equalled the amount received by them for goodwill.

factory from an investor's point of view, and it has not led to any serious increase in prices; but it must be repeated that the personal element is strong in the management.

These movements would not be English if they did not show a disregard of all logical symmetry, and it is not surprising that, having begun with the last stage of the industry, the energies of combination next showed themselves in one of its earliest stages —that of wool-combing. The Bradford Woolcombers' Association dealt, like the dyers, with a branch of the industry which did not trade in the materials used, but worked on commission for cash. There the parallel between the dyers and the combers ends. The Combing Combine has been a disastrous one from the first. The judgment of Mr. Justice Swinfen Eady, given against certain of its directors, on August 12th, 1904, will pass to posterity as a classic exposure of wrong methods for forming industrial combines. The floating of the Company in October, 1899 (when the dyers had demonstrated their success), showed signs of hurry. The prospectus admitted that all the firms concerned in the trade had not yet joined, but left investors to assume that "pending negotiations" would be successful, though further capital would be issued on the completion of purchases. Yet the half-million debentures and £433,000 preferred ordinary shares, which were

offered to the public, were quickly taken.[1] As a matter of fact, two of the largest and most powerful combing firms in Bradford kept out of the Association and were deadly competitors all through its unhappy life. The amounts of purchase money were not fixed directly, as in the case of the dyers, but by an intermediary, who paid the costs of floating, but received from the vendors a commission of 2½ per cent. on their sale prices. This process might be expected to lead in the ordinary course of human nature to the paying of high purchase moneys, but —whether such was the actual case or not—the directors opened out unlimited opportunities for inflation, by deciding that they would mutually forbear to inquire what each other's sale money was! In spite of the fact that the Association had no monopoly, enormous sums—how much cannot be stated—were paid for goodwill. The concern was over capitalised, was open to local competition by wealthy and experienced firms, much of its machinery was thrown idle by the shortage in Australian wool, and during the depression which came on with the South African War its position became desperate. So far as the Association worked, it was on a federal principle as regards the control of each individual combing-mill.

We have given examples of a Yorkshire combina-

[1] The deferred ordinary shares amounting to £581,800 were all taken by the vendors.

tion which has done reasonably well, and of another which has failed. An instance may now be quoted of one which has faced adversity and failed to pay dividends, but which appears likely, after some further qualifications, to maintain an existence. This is the British Cotton and Wool Dyers' Association, locally known as the "Slubbers," which is the trade name for a man who dyes raw material, such as wool and cotton yarn, as distinguished from a "dyer" who dyes cloth in the piece after it is woven. This combination followed that of the wool-combers, being floated in April, 1900. Its issue of capital was £750,000 in debenture stock (£191,000 of which was taken by vendors as part of their price), and £1,200,000 in ordinary shares (£370,000 taken by vendors). An arrangement was made with the Dyers' Association, which secured both parties against clashing or competition, and this was welded by the acquisition by each of a considerable block of the other's shares. The combination comprised forty-six firms. It differed from the dyers and the wool-combers in its trade not being localised. Though it was centred in Bradford, not more than sixteen firms were actually fixed there, four being in neighbouring towns, thirteen in Scotland, and thirteen in Lancashire. Eighty-six per cent. of the total trade was claimed as being represented, but this partial monopoly was open to attack on account of the scattered nature of the industry, and its wider scope, cotton and other

materials than wool being dealt with. The terms of combination were arranged by the same intermediary, and on the same terms of commission as in the case of the wool-combers, with a result of inflated capital. The works, plant, and stock were valued at £872,155, and to this was added no less than £906,937 for goodwill, which was stated (in the annual meeting of 1903) to be eight years' purchase of the profits, or nearly three times as much as a solicitor would pay for a safe, old-fashioned, conveyancing practice! To support this weight of water only £40,000 was provided, by the issue, for working capital. The prospectus supplied the material for any reader to ascertain the enormous amount paid for goodwill, and also bore signs of the hurry for flotation by stating that negotiations were pending with other firms. In spite of this the public subscribed the portion of ordinary shares issued to them. It says something for the vitality of the business and the ability of its managers that the Association is still alive; but it cannot be described as a success.

In addition to the three associations already named, there have been federations in other branches of dyeing and among the makers of textile machinery; but the three which we have noticed are the representative West Riding "combines."

The experience of the West Riding seems to show that a large combination is not likely to succeed unless the industry is confined to a narrow area and

all the successful firms in that area agree to come in, and unless the managing heads have the freedom, the will, and the capacity for controlling and working the concern as closely as if it were their own business. The dyers did not float until they had contracts with 90 per cent. of the trade; their trade was a strictly local one, and they were assured of a quasi-monopoly by the specialised skill of their foremen and workpeople, and by the peculiarity of the water supply. They had suitable men for their managing directors. But when the services of these are no longer available the career of the Association may be different. It might be a very difficult matter to induce combining traders to submit to the personal control which has been found necessary in this Association.

The internal dangers of combinations appear to be, firstly, that, in order to secure the co-operation of the whole trade, absurdly favourable terms in the shape of payments for goodwill have to be offered. This leads to over-capitalisation. The next danger is that the managers and the officials of the combination show a natural tendency to claim high salaries, and the revenue is often wasted on expenses of this kind, which are out of all proportion to the management charges of individual firms.

There are more official posts, and at higher salaries, and more expenditure on directors in most of these associations than the funds can reasonably clear, *i.e.*

just the opposite of what is promised in the prospectus. The external evils of combinations in general seem to apply to the West Riding associations in a less degree.[1]

There has not been an appreciable rise in price, and there has been little, if any, pressure upon the liberty of customers; but it may be added, without insinuations, that no association had an absolute monopoly; and the wool-combers and the "slubbers" were open to substantial competition. All the associations operated adversely on the small traders who had made a living by supplying goods to the separate firms before the combination was formed. The buying has been done on a large scale in the cheapest markets by the central offices of the association, and on low terms at which the small merchant had no chance. The principal interest, however, of the West Riding associations lies rather outside the scope of a work on Trusts and Kartells. They have afforded a suggestive study of the extraordinary keenness of the English investor to put his money into industrial concerns on any terms, provided the flotation is a big one, and without any regard to the means by which the bigness is attained or the powers which he will

[1] It must be remembered that the primary object was to check the internecine competition which was threatening the whole industry. The creation of monopoly prices was never an object. If there was a secondary intention beyond the regulation of competition and the economies of management, it was the extraction of fancy valuations from the investing public; but this did not apply to all the associations.

have over the application of his money when he has once parted with it. Some of the associations will, further, become historic as examples of the elasticity of the term "average profits" as used in a prospectus.

The experience of the West Riding is typical. But we shall take another instructive example from another part of the country.

"The Calico Printers' Association," writes Mr. Macrosty in his recent account of the Trust movement in Great Britain,[1] "affords a spectacle of management that is likely to become classic." When the organisation, with an issued capital of £8,226,000, was complete it consisted of "a mob of eighty-four directors with no real authority" to represent the eighty-four distinct houses previously engaged in calico printing and now amalgamated, and "another mob of 114 vendor-managers." For the first two years the Association was unable to pay a dividend on its ordinary shares, though the prospectus estimated an annual profit of nearly half a million. The condition of the concern appeared so desperate that an investigating committee was appointed consisting of eminent men of business. The Report gave in a few sentences the inherent weaknesses of these huge combinations :—

"In most cases where a business is converted into a public company, and to a greater degree where a large number of businesses are combined and sold to

[1] See *British Industries*, edited by Professor Ashley, pp. 223–6.

the public, the necessity of meeting outside competition is no longer felt to the same extent, and the incentive to work the business economically in order to obtain an adequate return upon the capital employed is seriously lessened. Too much reliance is placed upon the possibility of obtaining higher prices, whereas it is, in the case of a public company, of the greatest importance to supervise every item of expenditure, to closely compare the cost of production and distribution with what it was formerly, and to reduce it wherever this can be done with safety."

The chairman of the Committee was Mr. Philippi, of Messrs. J. and P. Coats. The Report recommended the Association to substitute for its original organisation a board of six directors, an executive of from two to four, and an advisory committee of from three to eight. The Report further pointed out the desirability of introducing in some form the system of payment by results. "Men who show originality and ingenuity in designing and do specially good work in other directions must be encouraged and rewarded." Since the adoption of these proposals the Calico Printers' Association has paid three dividends of $2\frac{1}{2}$ per cent. each. In the summer of 1904 the £1 shares stood at about nine shillings, having slightly improved on the announcement of the second $2\frac{1}{2}$ per cent. dividend. So that investors in this combine have only lost a little more than half their capital.

None of these English imitation Trusts or Kartells

has been shown to have succeeded in raising or keeping prices above the natural level. It is impossible for any English combination to raise English prices above the level of international prices; for if they tried to do so, their goods would be immediately undersold by importations from abroad. An English Trust, therefore, if it is to dictate prices and destroy competition must be an international Trust, *i.e.* it must be able to dictate prices to the consumers, not merely of Great Britain, but of the whole world.

If the Coats Combine is in a position to do this, with regard to cotton thread it has certainly won an extraordinary position by sheer ability in industrial organisation, a position unique in the industrial world. But I do not understand that any such extraordinary claim is advanced on behalf of that brilliantly successful concern. If not, then Messrs. Coats have not established a monopoly; if they have done so, it is safe to predict that competitors will soon arise in some part of the world to compete for so lucrative a prize. There is a sense in which every manufacturer, who specialises successfully, establishes something in the nature of a monopoly, and he maintains it and secures exceptional profits just so long as he continues to excel, or so long as his success does not attract competitors into the field. There are many journalists and young authors and professors and students looking about anxiously for specimens of the Monopoly Portent; and the phenomenon of a

large successful business when seen is eagerly noted down, pressed into its proper box, with an appropriate label, and exhibited in due course to an eager public. But we must be very careful to distinguish the large profits that business genius can secure even in trades where what is called "cut-throat" competition prevails, from the profits that arise not from superiority but from monopoly, not from being the most efficient but from being the sole manufacturer.

Let me end this chapter by an illustration, the best I know of, and one which, though given in the heat of a general election in support of a political platform, has never been questioned. In 1885 Mr. Chamberlain furnished the following account of an incident in his own experience as a manufacturer of screws :—

"I have been out of the screw trade now for ten years or more, and I don't know anything about it in its present condition ; but I do know what happened while I was a member of the screw firm, and really my experience has a rather important bearing upon this question.

"We made screws by the aid of an American invention—a most beautiful machine, which was imported from America.

"Everyone of these countries put a duty upon screws from abroad. We, as you know, were perfectly open. Anyone could send screws without paying any duty at all. Now, then, what was the result?

This was a case of hardship. According to Mr. Dumphreys and the fair traders we ought to have gone whining about the country asking for protection for this wretched manufacture of ours, which was threatened by foreign competition.

"Now what was the fact? The fact was this, that at the time of which I am speaking we sent screws into every country in the world, and no country in the world was able to send screws here. Who benefited by it? Well, we did. But the working men benefited. There were more of them employed than had ever been employed before, and they were employed at better wages. I travelled abroad at that time, and I went to the French and German and other factories, and I knew all that was going on, and in every case the wages of the working people making the same articles were lower—much lower—in some cases only half of what we were paying, and the time that they worked was in every case longer. In France, for instance, they worked twelve hours a day, when we were working nine hours. I say in every case. I should say in every case but one. In America the work-people got higher wages than they did in England, but the cost of living was very much greater, and their position was really not so good as that of our workmen. Clearly, the working classes in England benefited by our Free Trade system.

"They did it, and my firm received a handsome income for years from the American manufacturers, protected as they were by the folly and stupidity of this Protectionist legislation.

"The only people who suffered were the working

classes of the United States, who had to pay more for every screw they used, and every manufacture in which they were engaged was hampered and trammelled by the additional cost that was put upon their materials. They and they alone bore the burden of this tax upon their industry."[1]

I have given the passage exactly as it appears in the reports in order to avoid the criticisms to which a summary or a mutilated quotation might be liable. My readers may agree or disagree with the inferences Mr. Chamberlain then drew as to fiscal policy, but they will admit that his narrative helps to justify the following proposition: *Most if not all of the English Trusts are merely large well-organised business concerns which are so cleverly managed that they earn for a time enormous profits; and, perhaps, undersell and ruin most of their competitors, so as to establish temporarily a quasi-monopoly.*

In course of time, however, they decline and fall before new and more energetic competitors. I cannot give the later history of Mr. Chamberlain's old firm; but its supremacy, or quasi-monopoly, did not remain for another decade unchallenged. Early in 1894, an English merchant wrote to a firm of German screw importers in London asking for the price of German screws. They replied (March 2nd, 1894):—

[1] See verbatim report of a speech delivered by Mr. Chamberlain which appeared in the Birmingham *Daily Post*, November 13th, 1885. An abbreviated report will be found in the *Times* of the same date.

"There are no German screws imported into this country at present, as German manufacturers are bound by contract with Nettlefolds not to compete in the United Kingdom." This agreement became a general one between British and German screw makers, who thus "had their respective markets reserved for their exclusive exploitation; and in this way overlapping and price cutting were obviated." The arrangement subsisted till 1901, in which year, we are informed, "it came to an end, owing to the impossibility of controlling a number of new makers who had come into the trade."[1] In August, 1905, it was announced that a new international syndicate would be formed to raise prices 50 per cent., and that "the British market may shortly be closed to German screws." This report, however, was immediately denied by Messrs. Johnson, Clapham, and Morris, a Manchester firm which imports foreign screws, and "intends to continue the business."

Little is really known of these private international agreements between capitalists and manufacturers in different countries. Probably their number and efficacy are apt to be exaggerated. But there may be cases in which, even in a Free Trade country, monopoly prices of a special article can be maintained for a time by such agreements.

[1] From the *Manchester Guardian*. August, 1905.

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